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No. _____ OFFICE OF THE CLERK

In The
Supreme Court of the United States

STUART T. GUTTMAN, M.D.,

Petitioner,

v.

G.T.S. KHALSA, LIVINGSTON PARSONS and THE STATE OF NEW MEXICO,

Respondents.

On Petition For A Writ Of Certiorari To The United State Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the *Rooker-Feldman* doctrine bars federal-court jurisdiction when the federal proceedings were initiated before parallel state-court proceedings were completed.

2. Whether the *Rooker-Feldman* doctrine bars federal-court consideration of issues that the plaintiff lacked a reasonable opportunity to litigate in state court.

3. Whether the *Rooker-Feldman* doctrine applies simply because a state court failed to remedy an injury the defendant caused the plaintiff.

4. Whether the *Rooker-Feldman* doctrine bars a federal-court challenge asserting that a state administrative agency decision violates federal law where the plaintiff unsuccessfully sought "arbitrary and capricious" or "substantial evidence" judicial review of the agency's decision in state court.

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PETITION FOR A WRIT OF CERTIORARI

Dr. Stuart T. Guttman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the district court (App., *infra*, at 12-23) is reported at 320 F. Supp.2d 1164. The opinion of the court of appeals (App., *infra*, at 1-11) is reported at 401 F.3d 1170.

JURISDICTION

The court of appeals entered its judgment on March 17, 2005, and this petition is filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Americans with Disabilities Act and New Mexico state statutes appear in the appendix.

STATEMENT OF THE CASE

In this case, Dr. Stuart Guttman asserts challenges under Title II of the Americans with Disabilities Act (ADA)

and 42 U.S.C. § 1983 to the decision of the New Mexico Board of Medical Examiners to revoke his medical license. The lower courts concluded that the so-called *Rooker-Feldman* doctrine barred federal jurisdiction over those challenges, because Dr. Guttman had previously sought review of the Board's decision in state court. The state courts upheld the Board's decision under arbitrary-and-capricious and substantial-evidence standards, but expressly refused to rule on Dr. Guttman's ADA claim. Dr. Guttman seeks certiorari to contest the lower courts' conclusion that the narrow state-court judicial review proceedings – which were not completed until *after* proceedings began in federal court – barred federal jurisdiction over his federal claims.

1. Until the events that gave rise to this litigation, Dr. Guttman had been a licensed medical doctor since 1975. C.A. App. 2. After practicing in Mississippi and Texas, Dr. Guttman moved to New Mexico, where he received a medical license in 1993. App., *infra*, at 2 [401 F.3d at 1171]. Because Dr. Guttman had a history of depression and post-traumatic stress disorder, the State Board of Medical Examiners granted the license with certain stipulations – notably that he would continue to receive treatment for his psychiatric conditions and that his psychiatrist would provide quarterly progress reports to the Board. C.A. App. 9-11. In 1995, however, the Board lifted the stipulations. App., *infra*, at 3 [401 F.3d at 1171-1172].

In 2000, following complaints that Dr. Guttman's psychiatric condition led to "conduct which made it difficult for fellow physicians and medical staff to work with him," and concerns that Dr. Guttman had been dishonest in response to its investigation of those complaints, the

Board held a hearing to determine whether to revoke his medical license. *Id.* at 3 [401 F.3d at 1172]. At the hearing, the Board's counsel stated that the Board had no concerns about Dr. Guttman's "diagnosis and treatment" of patients; instead, the concerns involved Dr. Guttman's "interpersonal" abilities relating to his dealings with colleagues and hospital staff. C.A. App. 126. To respond to those concerns, Dr. Guttman's counsel "proposed a number of restrictions, similar to those under which Guttman had previously practiced in Texas, that would limit Guttman's medical practice to a solo clinic as well as require regular reporting to the Board and posting notice of his restrictions in his medical office." App., *infra*, at 3 [401 F.3d at 1172].

Despite counsel's proposal, the Board ordered on February 28, 2001, that Dr. Guttman's license be revoked. C.A. App. 18-26. The Board found that Dr. Guttman had "an underlying mixed personality disorder" and "a history of major depression, Post Traumatic Stress Disorder." *Id.* at 23. The Board also determined that future psychiatric treatment and intervention by employers and associates "would not likely be effective in changing his behavior." *Id.* But the Board did not directly address counsel's proposal that Dr. Guttman retain his license under restrictions similar to those under which he had practiced in Texas. Instead, the Board simply ruled that, because of mental illness, Dr. Guttman could not "practice medicine with reasonable skill or safety," and that he had engaged in "unprofessional or dishonorable conduct." C.A. App. 24-26. As a result, the Board determined that Dr. Guttman's license should be revoked under N.M. Stat. Ann. § 61-6-15(A) (license subject to revocation where the doctor "has been guilty of unprofessional or dishonorable conduct")

and *id.* § 61-7-3(A) (license subject to revocation "in case of inability of the health care provider to practice with reasonable skill or safety" by reason of "mental illness").

2. Dr. Guttman sought judicial review of the Board's action in state court. He invoked N.M. Stat. Ann. § 39-3-1.1(D), which authorizes the state district court to set aside agency action in cases where "the agency acted fraudulently, arbitrarily, or capriciously," the agency's decision "was not supported by substantial evidence," or "the agency did not act in accordance with law." *See* C.A. App. 28. Dr. Guttman also contended that the Board's decision violated Title II of the ADA. *Id.*

The state district court rejected Dr. Guttman's claims in a one-page order. App., *infra*, at 28 [C.A. App. 49]. The court concluded that the Board's action "was within the Board's authority and based upon the law, was based upon substantial evidence as shown in the record, and was not fraudulent, arbitrary, or capricious." *Id.* The court refused to consider Dr. Guttman's ADA claim, because he had not raised it before the Board. *Id.* Both the state court of appeals and the state supreme court denied further review in one-page orders. *Id.* at 24 [C.A. App. 50, 51]. The state supreme court issued its order on May 21, 2003. *Id.* at 26 [C.A. App. 51].

3. On April 17, 2003, before the state supreme court issued its order finally disposing of his action for judicial review, Dr. Guttman filed this action pro se in the United States District Court for the District of New Mexico against the State of New Mexico and the Board's counsel and hearing officer. C.A. App. 1-8. He contended that the Board had violated the ADA by revoking his license without making any finding as to whether his disability

could be reasonably accommodated, and that the Board's procedures denied him due process. *Id.* at 3-7. Dr. Guttman sought damages and "any and all other relief as this Court deems appropriate and proper." *Id.* at 7-8.[1]

The defendants moved for summary judgment on multiple grounds, and the district court granted the motion. App., *infra*, at 12. The court concluded that all of Dr. Guttman's claims were barred by the *Rooker-Feldman* doctrine, that the claims against the individual defendants were barred by absolute quasi-judicial immunity, and that the claims against the state were barred by sovereign immunity. *Id.* at 21-23.

The Tenth Circuit affirmed, though it reached only the *Rooker-Feldman* issue. App., *infra*, at 2. Although Dr. Guttman's claims challenged only the actions of the Board, not the actions of the state courts, the Tenth Circuit concluded that those claims were jurisdictionally barred because they would "disrupt or undo the New Mexico state court decision affirming his license revocation." *Id.* at 9-10 [401 F.3d at 1175]. Although the state courts had simply reviewed the Board's decision under an arbitrary-and-capricious and substantial-evidence standard, and had expressly refused to hear Dr. Guttman's ADA claim, the Tenth Circuit held that the ADA claim was "'inextricably intertwined' with the state court's merits decision." *Id.* And although Dr. Guttman argued that the state courts deprived him of a full and fair opportunity to litigate his ADA claim, the Tenth Circuit concluded that the argument

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[1] In his response to the defendants' motion for summary judgment, Dr. Guttman, now represented by counsel, clarified that this catch-all claim for relief included a request for injunctive relief pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

was beside the point: "Even if he has suffered such a deprivation, our Circuit has held that *Rooker-Feldman* 'bars any suit that seeks to disrupt or "undo" a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims.'" *Id.* (quoting *Kenmen Engineering v. City of Union*, 314 F.3d 468, 478 (10th Cir. 1999)).

REASONS FOR GRANTING THE WRIT

The *Rooker-Feldman* doctrine holds that the lower federal courts lack jurisdiction to hear appeals from state-court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517, 1522 (2005) – decided after the Tenth Circuit issued its ruling in this case – the Court emphasized that the *Rooker-Feldman* doctrine occupies a "narrow ground." In particular, the Court held that the doctrine does not bar federal jurisdiction in a case where the plaintiff initiated federal litigation before the conclusion of proceedings in state court. *See id.* at 1526-1528. This is just such a case. Accordingly, as we show in Part I, *infra*, this Court should grant the writ of certiorari, vacate the Tenth Circuit's judgment, and remand for further consideration in light of *Exxon Mobil*.

If the Court declines to follow that course, it should grant certiorari and set the case for plenary review. Aside from the Tenth Circuit's failure to anticipate *Exxon Mobil*, this case presents three questions concerning the scope of the *Rooker-Feldman* doctrine, each of which has occasioned

deep and persistent conflict in the circuits, and none of which was resolved by *Exxon Mobil*.

First, the Tenth Circuit has persistently held that the *Rooker-Feldman* doctrine applies even if "the federal-court plaintiff had no opportunity to litigate her claims in the state-court proceeding." *Kenmen Engineering*, 314 F.3d at 478. The court of appeals followed that principle here. *See* App., *infra*, at 10. But as we show in Part II below, at least six circuits have held to the contrary. They have held, as the Eleventh Circuit put it in the most influential statement of their position, that the *Rooker-Feldman* doctrine "can apply only where the plaintiff had a reasonable opportunity to raise his federal claim in state proceedings." *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), *cert. denied*, 467 U.S. 1210 (1984).

Second, the Tenth Circuit held here that the *Rooker-Feldman* doctrine applied even though plaintiff Guttman sought redress for an injury – the Board's unlawful revocation of his medical license – that would have been precisely the same even if there had been *no* state-court litigation. As we show in Part III below, three other circuits have found the *Rooker-Feldman* doctrine applicable in similar circumstances – where a plaintiff who unsuccessfully challenged the defendants' unlawful conduct in state court seeks to assert a subsequent challenge to that conduct in federal court. But the Seventh and Ninth Circuits have concluded that such an approach inappropriately blurs the lines between the jurisdictional *Rooker-Feldman* doctrine, which is governed by federal law, and the more flexible doctrines of preclusion, which are governed by state law pursuant to 28 U.S.C. § 1738. Those circuits have emphasized "the distinction between a federal claim alleging injury caused by a state court

judgment (necessarily raising the *Rooker-Feldman* doctrine) and a federal claim alleging a prior injury that a state court failed to remedy (raising a potential res judicata problem but not *Rooker-Feldman*)." *Garry v. Geils*, 82 F.3d 1362, 1366-1367 (7th Cir. 1996).

Third, the Tenth Circuit held here that plaintiff Guttman's claim under Title II of the ADA was barred by *Rooker-Feldman* because it was "inextricably intertwined" with his state-court claims that the Board's decision was arbitrary and capricious and unsupported by substantial evidence. App., *infra*, at 9. But as we show in Part IV below, at least two other circuits have refused to apply *Rooker-Feldman* as a bar to federal claims when the state proceedings consisted of actions for review of administrative action under an arbitrary-and-capricious or substantial-evidence standard. Because state administrative action can violate federal law even if it withstands state-law arbitrary-and-capricious or substantial-evidence review, where a federal claim follows such review it will *not* be the case that "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring in the judgment). Accordingly, those other circuits have held that the federal claims are not "inextricably intertwined" with the state-law claims in such circumstances. And they have done so in circumstances that were nearly identical to those of this case: where plaintiffs brought federal-law disability discrimination challenges to state administrative action in federal court after unsuccessfully seeking judicial review of that action in state court. *See Parkview Associates Partnership v. City of Lebanon*, 225 F.3d 321, 326 (3d Cir. 2000); *Sheehan v. Marr*, 207 F.3d 35, 40-41 (1st Cir. 2000).

Had the Tenth Circuit anticipated *Exxon Mobil*, or reached a different conclusion on *any* of the three issues that have drawn the courts of appeals into conflict, the result below would have been different. But the Tenth Circuit did not do so. As a result, it deprived Dr. Guttman of *any* forum, state or federal, in which to assert his ADA claim, and it did so on the basis of a state-court proceeding that expressly refused to rule on that claim. The injustice of that result cries out for this Court's intervention.

I. The Court Should Grant, Vacate, and Remand in Light of *Exxon Mobil*

Dr. Guttman initiated federal-court litigation before the state-court proceedings in this case were completed. In *Exxon Mobil*, this Court held that the *Rooker-Feldman* doctrine does not apply in such circumstances. The Court held that the doctrine bars federal-court jurisdiction only in the "limited circumstances" exhibited by *Rooker* and *Feldman* themselves, in which "the losing party in state court filed suit in federal court *after the state proceedings ended*, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." *Exxon Mobil*, 125 S.Ct. at 1526 (emphasis added). Applying that principle, the Court concluded that *Rooker-Feldman* did not bar jurisdiction in the case before it, where the plaintiff filed suit in federal court before the state-court proceedings concluded: "*Rooker-Feldman* did not prevent the District Court from exercising jurisdiction when ExxonMobil filed the federal action, and it did not emerge to vanquish jurisdiction after ExxonMobil prevailed in the Delaware courts." *Id.* at 1527-1528.

This case falls squarely within the rule of *Exxon Mobil*. Because Dr. Guttman filed this action seeking relief on federal-law claims in federal court before state-court proceedings were concluded, the district court plainly had jurisdiction of this case under 28 U.S.C. § 1331 at the time the complaint was filed. As in *Exxon Mobil*, the *Rooker-Feldman* doctrine "did not emerge to vanquish jurisdiction" after the state prevailed in state court. The Tenth Circuit thus should not have applied the *Rooker-Feldman* doctrine to bar Dr. Guttman's claims. Because the Tenth Circuit did not have the benefit of this Court's decision in *Exxon Mobil* at the time it issued its opinion here, the court should grant the writ of certiorari, vacate the Tenth Circuit's judgment, and remand for further consideration in light of that decision. *See Lawrence v. Chater*, 516 U.S. 163, 169-170 (1996) (*per curiam*).

II. The Courts of Appeals Are Divided Over Whether *Rooker-Feldman* Applies Where the Plaintiff Had No Reasonable Opportunity to Litigate His Federal-Law Claims in State Court

A. There is a Persistent Conflict in the Circuits on the Question

The courts of appeals have long disagreed over whether the *Rooker-Feldman* doctrine bars federal-court jurisdiction over claims that the plaintiff had no reasonable opportunity to litigate in state court. Here, as in previous cases, the Tenth Circuit held that the doctrine bars federal-court jurisdiction even if the plaintiff lacked such an opportunity. But the overwhelming majority of other circuits disagree.

In his petition for state-court judicial review of the Board's decision to revoke his medical license, Dr. Guttman urged that the Board's decision – in addition to lacking substantial evidence and being arbitrary, capricious, and an abuse of discretion – violated Title II of the ADA. But the state court refused to entertain the ADA claim, on the ground that Dr. Guttman "did not raise the issue of Americans with Disabilities Act compliance before the New Mexico Board of Medical Examiners." App., *infra*, at 28. In this federal-court action, Dr. Guttman argued that *Rooker-Feldman* did not deprive the court of jurisdiction over his ADA claim, because the state court's action deprived him of a reasonable opportunity to litigate the claim. The Tenth Circuit accepted the factual premise of that argument, but it rejected the legal conclusion: "Even if he has suffered such a deprivation, our Circuit has held that *Rooker-Feldman* 'bars any suit that seeks to disrupt or "undo" a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims.'" App., *infra*, at 10 [401 F.3d at 1175] (quoting *Kenmen*, 314 F.3d at 478).

In so holding, the Tenth Circuit relied on its long-standing precedent. In *Kenmen*, on which the court of appeals relied in this case, the Tenth Circuit held that *Rooker-Feldman* barred the plaintiffs' suit even if, as the plaintiffs argued, the state-court proceedings denied them a full and fair opportunity to litigate their federal claims. *See Kenmen*, 314 F.3d at 478. The *Kenmen* court concluded that "[i]njecting the full-and-fair-opportunity-to-litigate inquiry into the *Rooker-Feldman* analysis tends to blur the distinction between res judicata and *Rooker-Feldman*." *Id.* at 478-479. In support of that conclusion, the court pointed

to two cases in which it had "previously applied the *Rooker-Feldman* doctrine despite the fact that the federal-court plaintiff had no opportunity to litigate her claims in the state-court proceeding." *Id.* at 478 (citing *Facio v. Jones*, 929 F.2d 541, 542-544 (10th Cir. 1991); *Anderson v. Colorado*, 793 F.2d 262, 264 (10th Cir. 1986) (*per curiam*)). A panel of the Ninth Circuit has agreed with the Tenth Circuit's holding that the *Rooker-Feldman* doctrine applies even where the plaintiff lacked a reasonable opportunity to litigate his federal claims in state court. *See Bianchi v. Rylaarsdam*, 334 F.3d 895, 900-901 (9th Cir. 2003) (relying on *Kenmen* to hold that "[t]he *Rooker-Feldman* doctrine does not require us to determine whether or not the state court fully and fairly adjudicated the constitutional claim"), *cert. denied*, 540 U.S. 1213 (2004).[2]

But every other circuit to have addressed the question has rejected the Tenth Circuit's position. In *Wood*, 715 F.2d at 1547, the Eleventh Circuit held that the *Rooker-Feldman* rule "can apply only where the plaintiff had a reasonable opportunity to raise his federal claim in state proceedings." Because the plaintiff did not have such an opportunity, the court held *Rooker-Feldman* inapplicable. *See id.* at 1547-1548. The First, Second, Third, Seventh, and Eighth Circuits have also rejected the Tenth Circuit's position. *See, e.g.*, *Sheehan*, 207 F.3d at 40-41 (where state court could not have considered plaintiff's ADA claim, *Rooker-Feldman* did not bar raising that claim in federal

[2] The precise state of the law on this issue in the Ninth Circuit is unclear. *Bianchi* stands in tension with the Ninth Circuit's earlier decision in *Mullins v. Oregon*, 57 F.3d 789, 792 (9th Cir. 1995), which held that *Rooker-Feldman* did not bar federal-court jurisdiction where the state court neither considered nor could have considered the plaintiffs' federal constitutional claims.

court); *Hachamovitch v. DeBuono*, 159 F.3d 687, 695 (2d Cir. 1998) (where limitations on state court's jurisdiction denied plaintiff "a full and fair opportunity to litigate the constitutional issue in the first proceeding," *Rooker-Feldman* did not bar consideration of those issues in subsequent federal-court proceeding) (internal quotation marks and brackets omitted); *Gulla v. North Strabane Township*, 146 F.3d 168, 173 (3d Cir. 1998) (*Rooker-Feldman* did not apply where the plaintiffs "could not obtain an adjudication of their claims in state court"); *Long v. Shorebank Development Corp.*, 182 F.3d 548, 558-560 (7th Cir. 1999) (holding *Rooker-Feldman* inapplicable because "the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings" where state-court procedures "would have effectively precluded" plaintiff from litigating her federal claims); *Simes v. Huckabee*, 354 F.3d 823, 829 (8th Cir. 2004) (holding *Rooker-Feldman* inapplicable because plaintiffs lacked "a reasonable opportunity to raise their federal claims in state court" where the state court was presented with both federal and state claims but declined to hear the merits of the federal claims); *see also Brown & Root, Inc. v. Breckinridge*, 211 F.3d 194, 201-202 (4th Cir. 2000) (agreeing in dicta that *Rooker-Feldman* does not apply where the plaintiff lacked "a reasonable opportunity to raise its federal claims in state court"). The Sixth Circuit has similarly held that *Rooker-Feldman* is "inapplicable to claims that the state court did not address or rule upon even though the federal claims arose out of the same nucleus of facts." *Stemler v. Florence*, 350 F.3d 578, 589 (6th Cir. 2003) (refusing to apply *Rooker-Feldman* where the issue asserted in federal-court suit was not "salient before the Kentucky court," even though that court discussed the issue in dicta), *cert. denied*, 125 S.Ct. 61 (2004).

The Tenth Circuit acknowledged some of these cases, App., *infra*, at 10 [401 F.3d at 1175], but it sought to distinguish them on the ground that Dr. Guttman "was not deprived of an opportunity to raise his ADA claim in state court." *Id.* at 10 [*id.*]. The Tenth Circuit appeared to read the other circuits as drawing a distinction between cases "where a litigant has not had a fair opportunity to *raise* a federal claim in state court proceedings," in which the *Rooker-Feldman* doctrine does not apply, *id.* at 10 [*id.*] (emphasis in original), and cases where the litigant "has been deprived of a full and fair opportunity to *litigate* this claim," in which the doctrine does apply, *id.* (emphasis added). But the cases themselves emphatically reject such a gossamer distinction. Some circuits have explicitly held that *Rooker-Feldman* cannot apply in the absence of a "full and fair opportunity to *litigate*." *E.g.*, *Hachamovitch*, 159 F.3d at 695 (emphasis added); *Gulla*, 146 F.3d at 173 (quoting *Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992)) (emphasis added; internal quotation marks omitted). And even those circuits that have used the "opportunity to raise" formulation have made clear that "federal plaintiffs cannot be said to have had a reasonable opportunity to raise their federal claims in state court where the state court declines to address those claims and rests its holding solely on state law." *Simes*, 354 F.3d at 829. That, of course, is precisely what happened here.

Indeed, the facts of this case are quite similar to those in cases where courts outside of the Tenth Circuit have held *Rooker-Feldman* inapplicable because the plaintiff was denied a reasonable opportunity to litigate his federal claims in state court. In *Whiteford v. Reed*, 155 F.3d 671 (3d Cir. 1998), the plaintiff brought a federal constitutional

challenge to the State Board of Medicine's suspension of his medical license. He first sought to raise his constitutional claims in a state-court petition for judicial review, but the court refused to consider those claims on the merits on the ground that "he had violated Pennsylvania's rules of appellate procedure." *Id.* at 674. Because the plaintiff "could not obtain an adjudication of his constitutional claims in state court," the Third Circuit held that "*Rooker-Feldman* does not preclude him from seeking review in federal court." *Id.*; *see also Gulla*, 146 F.3d at 172-173 (*Rooker-Feldman* no bar where state court refused to consider federal claims for lack of standing). And in *Simes*, 354 F.3d at 826, the Eighth Circuit held that *Rooker-Feldman* did not apply where the plaintiffs had brought a state-court suit raising both state and federal claims, but the state court "ruled on only state law issues, ignoring the federal claims."

In short, there is a longstanding conflict in the circuits regarding whether the *Rooker-Feldman* doctrine bars claims over which the plaintiff lacked a reasonable opportunity to litigate in state court. Had this case arisen in one of the circuits that holds the *Rooker-Feldman* doctrine inapplicable in such circumstances, Dr. Guttman's claim would not have been dismissed.

There is no reason to believe the conflict will go away. In a series of cases extending for nearly two decades, the Tenth Circuit has insisted that the *Rooker-Feldman* doctrine applies even where the plaintiff lacked a full and fair opportunity to litigate his claims in state court. The Tenth Circuit has done so in the face of an overwhelming weight of contrary precedent from the other courts of appeals. Although this Court's decision in *Exxon Mobil* suggested generally that the *Rooker-Feldman* doctrine

should be narrowly construed, *see* 125 S.Ct. at 1522, 1526, the Court did not address the question whether the *Rooker-Feldman* doctrine applies in the absence of a reasonable opportunity to litigate the federal claim in state court. Indeed, even after *Exxon Mobil*, the Tenth Circuit has reaffirmed its position that the doctrine does bar federal jurisdiction in such circumstances. *See Derringer v. Chapel*, 98 Fed. Appx. 728, 734 (10th Cir., Apr. 12, 2004). Only this Court can resolve the abiding conflict in the circuits.

B. The *Rooker-Feldman* Doctrine Does Not Properly Deprive the Federal Courts of Jurisdiction Where the Plaintiff Lacked a Reasonable Opportunity to Litigate His Federal Claims in State Court

For reasons explained by the overwhelming majority of circuits that have disagreed with the Tenth Circuit on this issue, the court of appeals was incorrect to apply the *Rooker-Feldman* doctrine where the plaintiff lacked a reasonable opportunity to litigate his federal claims in state court. The *Rooker-Feldman* doctrine deprives the federal courts of jurisdiction over only those issues that were "actually litigated in the [state] courts or inextricably intertwined with issues so litigated." *Pennzoil*, 481 U.S. at 18 (Scalia, J., concurring); *see Feldman*, 460 U.S. at 483-484 n.16. Where the state court refused to hear a federal issue raised by the plaintiff, that issue obviously was not "actually litigated." And "because the issue did not figure, and could not reasonably have figured, in the state court's decision," that issue "is not 'inextricably intertwined' with the state court's judgment" either. *Wood*, 715 F.2d at 1543.

Moreover, serious constitutional questions arise when a court applies the *Rooker-Feldman* doctrine to bar federal-court litigation where the plaintiff lacked a reasonable opportunity to litigate his claims in state court. As the Eleventh Circuit has noted, "[s]uch a harsh rule might deprive the plaintiff of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, a result arguably contrary to the requirements of due process." *Id.*

This case presents a perfect example of the injustice caused by the Tenth Circuit's "harsh rule." Dr. Guttman sought to raise his ADA claim in state court. But the state courts refused to entertain the claim, on the ground that he should have presented it to the state Board of Medical Examiners in the first instance. The federal courts then refused to entertain the claim, on the ground that it was barred by the state courts' (non)adjudication. The courts reached this result notwithstanding that the *Rooker-Feldman* doctrine does not apply to state administrative decisions, *see Verizon Maryland, Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002), and that Dr. Guttman did not have a ripe ADA claim until the Board revoked his license without granting him the accommodations he had requested – so he had no opportunity to present an ADA claim to the Board. As a result, Dr. Guttman has been deprived of *any* judicial forum – state or federal – in which to assert his ADA claim.

III. The Courts of Appeals are Divided Over Whether *Rooker-Feldman* Applies When the Federal-Court Plaintiff Challenges Not a State-Court Order But an Action of the Defendant for Which the State Court Failed to Provide Relief

A. The Circuits are Divided on the Question

Dr. Guttman's ADA and Section 1983 claims do not seek to overturn the state court's judgment in any way. They seek instead to overturn the decision of the state Board of Medical Examiners to revoke Dr. Guttman's license. Those claims – and the relief Dr. Guttman would have sought – would have been precisely the same had there been *no* state-court litigation. The courts of appeals are deeply divided over whether the *Rooker-Feldman* doctrine applies in such circumstances.

Although Dr. Guttman's federal suit does not seek to overturn the state court's judgment, the Tenth Circuit held that it is nonetheless barred by *Rooker-Feldman* because the federal-court suit seeks essentially the same relief – "judicial reinstatement of his medical license" – that Dr. Guttman unsuccessfully sought in state court. App., *infra*, at 9 [401 F.3d at 1175]. The Second, Fourth, and Eighth Circuits have similarly applied the *Rooker-Feldman* doctrine to bar federal-court litigation that seeks relief not from the state court's judgment but from actions of the defendant for which the state court has denied a remedy. *See Moccio v. New York State Off. of Court Admin.*, 95 F.3d 195, 200-202 (2d Cir. 1996) (state employee's federal-court challenge to his termination is barred by *Rooker-Feldman* where the employee had previously challenged the termination unsuccessfully in state court); *Brown & Root, Inc.*, 211 F.3d at 200 (federal-court suit barred by *Rooker-Feldman* because "[t]his complaint seeks precisely the

same relief denied by the state trial court" – an order compelling the defendant to submit to arbitration); *Lemonds v. St. Louis County*, 222 F.3d 488, 493-494 (8th Cir. 2000) (*Rooker-Feldman* bars federal-court challenge to county's decision to disincorporate a city where state court rejected substantively similar challenge to that decision), *cert. denied*, 531 U.S. 1183 (2001).

By contrast, the Seventh and Ninth Circuits have emphasized "the distinction between a federal claim alleging injury caused by a state court judgment (necessarily raising the *Rooker-Feldman* doctrine) and a federal claim alleging a prior injury that a state court failed to remedy (raising a potential res judicata problem but not *Rooker-Feldman*)." *Garry*, 82 F.3d at 1366-1367. The Ninth Circuit has described the rule this way:

> If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction.

Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003) (W. Fletcher, J.).

Applying that rule, both the Seventh and Ninth Circuits have repeatedly held the *Rooker-Feldman* doctrine inapplicable in cases just like this one. In *Rizzo v. Sheahan*, 266 F.3d 705, 714 (7th Cir. 2001), for example, the Seventh Circuit held that *Rooker-Feldman* did not bar the public-employee plaintiff's claim that her termination

violated Title VII, even though the plaintiff had unsuccessfully sought judicial review of the termination in state court. The court explained that "[a]lthough Rizzo was certainly displeased with the conclusion reached by the Illinois courts, the injury she alleges before this court did not result from the state court judgment. Instead, Rizzo filed this claim because she did not receive the relief she sought from the Illinois courts – a determination that she should not have been terminated." *Id.* Similarly, in *Durgins v. City of East St. Louis*, 272 F.3d 841, 844 (7th Cir. 2001) (Easterbrook, J.), the court held that *Rooker-Feldman* did not bar the police officer plaintiff's Section 1983 suit challenging her discharge, even though her state-court action for judicial review of that discharge was unsuccessful. The court explained that "the injury comes from her discharge, not from the state court's failure to order her reinstatement." *Id.*[3]

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[3] *See also Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004) (W. Fletcher, J.) (holding *Rooker-Feldman* inapplicable where the federal-court plaintiff did not "allege legal errors by the state courts" but instead "allege[d] wrongful acts by the defendants, such as negligently designing the ski run and negligently placing or failing to remove the rock," even though the federal-court claims were "almost identical to the allegations and claims asserted in state court"); *Noel*, 341 F.3d at 1166 (even though plaintiff's federal-court claims were "very similar" to previously litigated claims and "possibly should have been asserted in that state court litigation," *Rooker-Feldman* inapplicable because the plaintiff "neither asserted as a legal wrong an allegedly erroneous decision by the state court in the earlier state court litigation nor sought relief from the state court judgment"; plaintiff instead "asserted as legal wrongs allegedly illegal acts committed by a party against whom he had previously litigated"); *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702-703 (7th Cir. 1998) (holding that the plaintiff's Section 1983 challenge to the defendant town's denial of a building permit was not barred by *Rooker-Feldman*, even though the plaintiff had previously challenged that denial unsuccessfully in state

(Continued on following page)

As the foregoing discussion demonstrates, the courts of appeals are deeply divided over the application of *Rooker-Feldman* to cases where the plaintiff seeks relief not from a state-court judgment itself but from an act of the defendant for which the state court failed to provide redress. Four circuits hold that the doctrine does bar federal-court jurisdiction in such circumstances, while two circuits hold that it does not. At least one court of appeals has noted the existence of the conflict in the circuits. *See Kougasian*, 359 F.3d at 1142. Had this case arisen in the Seventh or Ninth Circuits, Dr. Guttman's suit would not have been barred by *Rooker-Feldman*. Although Dr. Guttman seeks essentially the same relief – reinstatement of his medical license – that the state courts denied, his federal-court claims do not challenge the judgment of the state courts; they challenge the actions of the state Board.

B. The *Rooker-Feldman* Doctrine Does Not Properly Apply When the Plaintiff Challenges an Action of the Defendant for Which a State Court Failed to Grant Relief

As the Seventh and Ninth Circuits have persuasively explained, there is no sound basis to apply *Rooker-Feldman* to a case like this, where the federal-court plaintiff merely seeks relief similar to that denied by a

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court: "Centres does not allege an injury from the state court judgment itself; rather, it challenges the actions of the defendants"); *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995) (Posner, J.) (holding that a federal court action was not barred by *Rooker-Feldman* even though the plaintiff had unsuccessfully sued the same defendants in state court for similar transactions: *Rooker-Feldman* "ought to be confined to cases in which the defendant in the state court is seeking to undo a remedial order of some sort (ordinarily a criminal conviction or an injunction)").

state court. Although the plaintiff may be required to overcome principles of preclusion in such a case, the jurisdictional *Rooker-Feldman* doctrine is inapt.

For one thing, as Judge Fletcher pointed out in his opinion for the Ninth Circuit in *Noel*, 341 F.3d at 1163, in both *Rooker* and *Feldman* the plaintiffs sought to challenge an injury that was directly inflicted by the state-court judgment itself. In *Rooker*, 263 U.S. at 414-415, the plaintiffs contended that a state-court judgment violated the Constitution and filed a bill in equity in federal court asking that the judgment be "declared null and void." In *Feldman*, 460 U.S. at 463, the plaintiffs sued the District of Columbia Court of Appeals and contended that the court had violated the Constitution by refusing their petitions for waiver of the rule requiring bar "applicants to have graduated from an approved law school." They thus asked the federal courts directly to overturn a judgment of the District of Columbia courts. *See id.* at 479-482 (denial of waiver was a judicial decision). Neither *Rooker* nor *Feldman* involved a case like this, where the plaintiff seeks to challenge an injury that an adverse party caused, and that the state courts simply failed to remedy.

And as Judge Posner suggested in his opinion for the Seventh Circuit in *Nesses*, 68 F.3d at 1004, to extend *Rooker-Feldman* to cases like this one risks "confusing *Rooker-Feldman* with res judicata." If the *Rooker-Feldman* doctrine applies whenever a federal-court plaintiff seeks the same relief he unsuccessfully sought – or raises the same issues he unsuccessfully raised – in state court, then it threatens to occupy virtually all of the territory currently covered by the doctrines of issue and claim preclusion. As Judge Fletcher pointed out in his opinion for the Ninth Circuit in *Kougasian*, 359 F.3d at 1143, such a broad

reading of *Rooker-Feldman* "would in some cases give greater preclusive effect to state court judgments than the states themselves would give those judgments." That "super-preclusive effect," he persuasively argued, "would violate the requirement of 28 U.S.C. § 1738 that federal courts give the same (not more and not less) preclusive effect the rendering state courts would give to those judgments." *Id.* (citing *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 466 (1982)).

Moreover, preclusion is "an affirmative defense ordinarily lost if not timely raised." *Arizona v. California*, 530 U.S. 392, 410 (2000). It "is not a jurisdictional matter." *Exxon Mobil*, 125 S.Ct. at 1527. The *Rooker-Feldman* doctrine, by contrast, is jurisdictional. *See id.* at 1526. The broad reading of *Rooker-Feldman* applied by the court of appeals here thus risks transforming preclusion into a jurisdictional doctrine.

To avoid these pernicious results, the Seventh and Ninth Circuits have held that the *Rooker-Feldman* doctrine applies only where "a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision." *Noel*, 341 F.3d at 1164. Where "a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party" – even if a state court failed to provide relief for that act – those courts have held that "*Rooker-Feldman* does not bar jurisdiction." *Id.* This Court should make clear that the rule adopted by the Seventh and Ninth Circuits correctly applies the *Rooker-Feldman* doctrine.

IV. The Courts of Appeals are Divided Over Whether a Federal Challenge to a State Administrative Agency Decision is "Inextricably Intertwined" With Earlier State Court Litigation Seeking Arbitrary-and-Capricious or Substantial-Evidence Review of That Decision

A. The Circuits are Divided on the Question

In Dr. Guttman's case, the state Board of Medical Examiners did not consider any question of federal law. It decided only that Dr. Guttman had engaged in "unprofessional or dishonorable conduct," and that due to mental illness he could not "practice with reasonable skill or safety," and thus that his license should be revoked pursuant to N.M. Stat. Ann. §§ 61-6-15(A), 61-7-3(A). *See* C.A. App. 24-26. Dr. Guttman sought judicial review of that determination in the state courts, but those courts did not address any question of federal law. *See* Part II, *supra*. Nor did they even conduct a *de novo* review of the Board's decision as a matter of state law. Instead, in keeping with the deferential standard dictated by the state statute authorizing judicial review of administrative action, *see* N.M. Stat. Ann. § 39-3-1.1(D), they ruled only that the decision "was within the Board's authority and based upon the law, was based upon substantial evidence as shown in the record, and was not fraudulent, arbitrary, or capricious." App., *infra*, at 28 [C.A. App. 49]. Although the state courts thus did not consider any federal question, the Tenth Circuit held that *Rooker-Feldman* barred his federal claims "because a New Mexico state court judgment affirmed the Board's decision as based on substantial evidence." *Id.* at 9 [401 F.3d at 1175]. Those claims, the Tenth Circuit concluded, were "'inextricably intertwined' with the state court's merits decision." *Id.*

By contrast, at least two other circuits have concluded that federal challenges to state administrative action are not "inextricably intertwined" with issues previously litigated in state-court proceedings for arbitrary-and-capricious or substantial-evidence review.[4] Accordingly, those courts have refused to apply *Rooker-Feldman* to cases like this one. For example, in *Parkview Associates Partnership*, 225 F.3d at 322, the plaintiffs challenged a local zoning decision as discriminating on the basis of disability in violation of the ADA, the Fair Housing Act, and the Rehabilitation Act of 1973. The plaintiffs first sought relief under a state-court procedure that provided for review of administrative action that involved "an abuse of discretion or an error of law" or was "not supported by substantial evidence." *Id.* (internal quotation marks omitted). They did not assert their federal disability discrimination claims in that proceeding. *See id.* at 323. After the state courts refused to provide relief, the plaintiffs brought their disability discrimination claims in

[4] In addition to the cases discussed in text, the Tenth Circuit's decision here stands in tension with the Eleventh Circuit's decision in *Biddulph v. Mortham*, 89 F.3d 1491, 1495 n.1 (11th Cir. 1996), *cert. denied*, 519 U.S. 1151 (1997), which held that a state court's denial of a petition for mandamus based on the lack of a "clear and indisputable" legal claim does not bar a subsequent federal court action asserting that claim on the merits. The law on this issue in the Second Circuit is unclear. *Compare Moccio*, 95 F.3d at 200-202 (unsuccessful action for arbitrary-and-capricious review in state court bars subsequent 1983 due process and equal protection claims in federal court under *Rooker-Feldman*), *with DiBlasio v. Novello*, 344 F.3d 292, 296 (2d Cir. 2003) (*Rooker-Feldman* didn't bar due process claims notwithstanding plaintiff's earlier unsuccessful Article 78 action for judicial review in state court: "Deciding the federal claims in DiBlasio's favor would not necessarily contradict the Article 78 court's determination that Novello's decision was not 'arbitrary and capricious.'"), *cert. denied*, 541 U.S. 988 (2004).

federal court. Emphasizing that the state-court proceedings "were limited to appellate, on-the-record review of whether the Zoning Hearing Board abused its discretion or committed an error of law" in applying state zoning law, the Third Circuit held that the plaintiffs' federal claims were not "inextricably intertwined with the previous state court adjudication." *Id.* at 326. To decide those claims, the Third Circuit concluded, the federal courts "would not have to review the state courts' determinations that the Board's decisions were supported by substantial evidence in the record." *Id.* Accordingly, the *Rooker-Feldman* bar did not apply. *See id.*

Similarly, in *Sheehan*, 207 F.3d at 37-38, the plaintiff police lieutenant challenged an administrative decision that he was subject to involuntary disability retirement under state law. He unsuccessfully filed a state-law judicial review proceeding in state court, which "determined that the Board's decision to retire Sheehan was based upon substantial evidence." *Id.* at 38. The plaintiff then filed suit in federal court. For the first time, he asserted a claim under the ADA; he alleged that because he could continue to perform his job with "reasonable accommodations," the involuntary retirement decision violated the federal statute. *Id.* Although acknowledging that there was factually "some overlap" between the two proceedings, the court held that the plaintiff's "ADA claim cannot be regarded as inextricably intertwined with the state court's involuntary retirement decision." *Id.* at 40. Given the significant differences in the issues the federal courts would be called upon to redress, the First Circuit concluded that the plaintiff's case was not one in which "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it," and thus

was not barred by *Rooker-Feldman*. *Id.* (internal quotation marks omitted).

Had this case arisen in the First or Third Circuits instead of the Tenth Circuit, Dr. Guttman's federal claims would not have been deemed to be "inextricably intertwined" with his state-court action for arbitrary-and-capricious review of the state Board's decision, and his case would not have been dismissed on *Rooker-Feldman* grounds. This conflict is independent of the other two issues on which the Tenth Circuit's decision conflicts with the rulings of other courts of appeals. But as with those other two conflicts, there is no reason to believe that it will disappear. *Exxon Mobil* did not address the circumstances under which federal claims are "inextricably intertwined" with a judgment rendered in state court before the federal litigation commenced. Indeed, no decision of this Court addresses the applicability of *Rooker-Feldman* to cases where the plaintiff previously sought arbitrary-and-capricious review in state court. Until this Court weighs in on the question, the courts of appeals will remain in conflict.

B. Federal-Law Challenges to State Administrative Action are Not "Inextricably Intertwined" With a State Court's Rejection of Arbitrary-and-Capricious or Substantial-Evidence Challenges to That Action

Where a state court reviews administrative action under an arbitrary-and-capricious or abuse-of-discretion standard, its determination is not "inextricably intertwined" for *Rooker-Feldman* purposes with a subsequent claim that the administrative action violated federal law. This Court has not defined the circumstances in which a

state-court determination is "inextricably intertwined" with a subsequent federal-court claim. But in his opinion concurring in the judgment in *Pennzoil Co.*, 481 U.S. at 25, Justice Marshall contended that "the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it."

A majority of the Court concluded that Justice Marshall's reading of "inextricably intertwined" gave too broad a scope to the *Rooker-Feldman* doctrine. *See id.* at 18 (Scalia, J., joined by O'Connor, J., concurring) (rejecting Justice Marshall's conclusion that *Rooker-Feldman* barred Texaco's action); *id.* at 21 (Brennan, J., concurring in the judgment) (same); *id.* at 28 (Blackmun, J., concurring in the judgment) (same); *id.* at 31 n.3 (Stevens, J., concurring in the judgment) (same). Yet even under Justice Marshall's broad interpretation, a federal challenge to state administrative action is not "inextricably intertwined" with an earlier state-court judgment affirming that action under an arbitrary-and-capricious or substantial-evidence standard. To conclude that a state administrative action violates federal law is not at all to imply that the action was unsupported by substantial evidence or was arbitrary and capricious as a matter of state law. A federal-court injunction against such an action is not "predicated upon a conviction that the state court was wrong" in rejecting the state-law action for judicial review. *Id.* at 25 (Marshall, J., concurring in the judgment).

Here, the state Board's action rested entirely on the state-law determinations that Dr. Guttman had engaged in "unprofessional or dishonorable conduct" and that he could not "practice with reasonable skill or safety." C.A. App. 24-26. The state courts affirmed that determination

as supported by substantial evidence and not arbitrary and capricious. App., *infra*, at 28. Although the state Board concluded that further treatment or intervention by colleagues would not likely change Dr. Guttman's behavior, C.A. App. 23, neither the Board nor the state courts addressed the question whether Dr. Guttman's disability could be reasonably accommodated as required by the ADA. A determination that the Board's decision violated the ADA would not at all challenge the state courts' determination to affirm that decision under state-law arbitrary-and-capricious and substantial-evidence standards. The Tenth Circuit was therefore incorrect to conclude that the issues presented here are "inextricably intertwined" with those resolved in state court.

CONCLUSION

The petition for writ of certiorari should be granted, the judgment below vacated, and the case remanded for further consideration in light of *Exxon Mobil*, *supra*. If the Court does not follow that course, it should grant certiorari and set the case for plenary review.

Respectfully submitted,

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PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

STUART T. GUTTMAN, M.D.,

Plaintiff-Appellant,

v.

G.T.S. KHALSA, LIVINGSTON PARSON, and THE STATE OF NEW MEXICO,

Defendants-Appellees.

No. 03-2244

UNITED STATES OF AMERICA

Intervenor.

Appeal from the United States District Court for the District of New Mexico (D.C. No. CIV-03-463)

(Filed Mar. 17, 2005)

Ian D. McKelvy, Sanders, Bruin, Coll & Worley, P.A., Roswell, New Mexico, for Plaintiff-Appellant.

Timothy S. Hale (Susan R. Johnson with him on the brief), Riley, Shane & Hale, P.A., Albuquerque, New Mexico, for Defendants-Appellees.

R. Alexander Acosta, Assistant Attorney General, David K. Flynn and Kevin Russell, Attorneys, United States

Department of Justice, Washington, D.C., filed a brief for Intervenor United States of America.

Before **LUCERO**, **ANDERSON**, and **McCONNELL**, Circuit Judges.

LUCERO, Circuit Judge.

Having failed to obtain reinstatement of his license to practice medicine through an action in New Mexico state courts, Dr. Stuart Guttman now seeks relief in federal court. His license to practice medicine was revoked by the New Mexico Board of Medical Examiners ("Board") and that decision was affirmed by the New Mexico Seventh Judicial District Court. His appeals to the New Mexico Court of Appeals and the New Mexico Supreme Court were unavailing. Subsequently, Dr. Guttman filed suit in federal district court against G.T.S. Khalsa, the Board's attorney, Livingston Parsons, the hearing officer, and the state of New Mexico, alleging violations of Title II of the Americans with Disabilities Act ("ADA") and 42 U.S.C. § 1983. On the basis of lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine, the district court granted summary judgment in favor of the defendants. We exercise jurisdiction under 28 U.S.C. § 1291 and **AFFIRM**.

I

Dr. Guttman possessed a medical license issued in New Mexico in 1993 with certain stipulations that were a consequence of his history of depression and post-traumatic stress disorder. Due to his mental illness, Dr.

Guttman had practiced under similar restrictions in both Mississippi and Texas. The stipulations to his New Mexico license were lifted by the Board in May 1995. However, in December 1999 the Impaired Physicians Committee ("Committee") directed Dr. Guttman to appear before it in response to complaints received about his professional conduct. After meeting with the Committee, Guttman received from the Board a Notice of Contemplated Action because of his mental illness and because of allegations that he was dishonest in responding to the Board's inquiries. He further received an Order of Summary Suspension of his medical license. Guttman appeared with counsel before the Board at a three-day hearing to determine whether his license to practice medicine in New Mexico should be revoked. During the hearing, Guttman's counsel proposed a number of restrictions, similar to those under which Guttman had previously practiced in Texas, that would limit Guttman's medical practice to a solo clinic as well as require regular reporting to the Board and posting notice of his restrictions in his medical office. These accommodations were designed to address Guttman's pattern of conduct which made it difficult for fellow physicians and medical staff to work with him.

Following the hearing, the Board made specific findings which included a history of Guttman's past pattern of problems with medical staff and patients in Mississippi, Texas, and New Mexico. The Board also found that Guttman had not given complete and honest responses to its inquiries concerning past problems with his practice in Gallup, New Mexico. As a consequence of these findings and numerous additional findings of abusive and disruptive behavior toward fellow physicians, medical staff, and patients unbecoming of a licensed physician, the

Board concluded that further therapeutic treatment would not remove the danger he posed to the public if he continued to practice medicine. Moreover, the Board found that Guttman could not be effectively monitored and would be unable to practice medicine safely. On February 28, 2001, the Board revoked Guttman's medical license pursuant to its authority under New Mexico's Uniform Licensing Act, N.M. Stat. Ann. § 61-1-1 et seq.

Guttman's appeal of the Board's decision to the Seventh Judicial District Court of New Mexico was denied because the state court found that the decision was based on substantial evidence and was not arbitrary, capricious, or fraudulent. However, the state court refused to consider Guttman's claim under Title II of the ADA because the claim had not been raised specifically before the Board. Although Guttman had proposed particular accommodations, he had not asserted any ADA rights before the Board for their consideration. His appeal before the New Mexico Court of Appeals was denied, as was his petition for certiorari to the New Mexico Supreme Court. Having exhausted all available state remedies, Guttman filed a complaint in federal district court alleging violations of his procedural due process rights under § 1983 and for violations of Title II of the ADA. Because a New Mexico state court rendered a final judgment with regard to Dr. Guttman's appeal from the Board's decision revoking his license, the district court concluded that it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine to hear Guttman's claims. In addition, the district court concluded that absolute immunity applied with regard to Guttman's § 1983 claim against Khalsa and Parsons and that Eleventh Amendment sovereign immunity applied

with regard to his ADA claim against New Mexico. Guttman now presents this appeal.

II

We review de novo a district court's dismissal of a complaint for lack of subject matter jurisdiction. *Kenman Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 1999). Under the doctrine that has arisen from two Supreme Court cases, *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923) and *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), a federal district court does not have subject matter jurisdiction to hear appeals from final judgments of state courts. This doctrine is based upon an inference that follows from 28 U.S.C. § 1257(a) which provides that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari." Appellate jurisdiction over state court judgments having been vested in the Supreme Court, it follows that "no court of the United States other than [the Supreme Court] could entertain a proceeding to reverse or modify the judgment" of a state's highest court. *Rooker*, 263 U.S. at 416. In *Rooker*, the harm alleged in federal court was based on the supposed errors made by the Indiana Supreme Court in deciding the plaintiffs' constitutional claims. Because federal district court jurisdiction is "strictly original," the Supreme Court affirmed the district court's dismissal of the case for lack of subject matter jurisdiction. *Id.* To allow a district court to modify the judgment of a state court "would be an exercise of appellate jurisdiction," *id.*, that is

implicitly denied to district courts.[1] Thus, under the *Rooker-Feldman* doctrine, a party who loses in state court is barred "from seeking what in substance would be appellate review of the state judgement in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Kiowa Indian Tribe v. Hoover*, 150 F.3d 1163, 1169 (10th Cir. 1998) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)).

Although federal district court review of issues actually adjudicated by state courts forms the clearest example of a forbidden exercise of appellate jurisdiction, the other half of the *Rooker-Feldman* doctrine forbids a district court from entertaining claims "inextricably intertwined" with a state court judgment. *Feldman*, 460 U.S. at 483, n.16. *Feldman* presented the question whether the district court had jurisdiction to review a District of Columbia court's refusal to grant plaintiffs a waiver to take the District of Columbia bar exam. *Id.* at 482. In response, the Supreme Court reasoned that "if the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's . . . [state court claims], then the district court is in essence being called upon to review the state-court decision." *Id.* at 483, n.16. If the actual claim brought in federal court has not been adjudicated in a prior state court proceeding, then a district court must

[1] This rule is not absolute, as district courts may properly exercise what is in effect appellate jurisdiction over collateral attacks to state court judgments pursuant to 28 U.S.C. § 2254.

determine whether "in essence" a party seeks review of the state-court judgment.[2] *Id.*

Because Guttman first raised his claims in state court, we look, under *Rooker-Feldman*, to whether he essentially seeks to bring a forbidden de facto appeal. *See, e.g., Facio v. Jones*, 929 F.2d 541, 543 (10th Cir. 1991) (holding that plaintiff's request for declaratory relief is "inextricably intertwined" with the underlying state court judgment against him). To determine whether *Rooker-Feldman* deprives a federal court of jurisdiction, we ask "whether the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress." *Kenman Eng'g*, 314 F.3d at 476. That is, we seek to determine "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." *Id.* (citing *Garry v. Geils*, 82 F.3d 1362, 1365 (7th Cir. 1996)).

In the present case, Guttman alleges that his injury results from the Board's failure to provide accommodations for him pursuant to the ADA. Noting that he presented the Board with proposed restrictions to his license to practice medicine, he argues that a violation of the ADA did not

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[2] Unlike a defense of res judicata (or "claim preclusion"), which requires federal courts to give preclusive effect to state court judgments as determined by state law pursuant to the full faith and credit statute, 28 U.S.C. § 1738, *Rooker-Feldman* is a matter of federal law and operates as a subject-matter jurisdictional bar that may be raised at any time. *See Gash Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) ("The *Rooker-Feldman* doctrine . . . has nothing to do with § 1738. It rests on the principle that district courts have only original jurisdiction. . . . "); *see generally, Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 466-67 (1982) (distinguishing res judicata ("claim preclusion") from collateral estoppel ("issue preclusion")); 18 Charles Alan Wright et al., Federal Practice & Procedure § 4402 (2d ed. 2002).

occur until the Board rendered its decision and refused to provide him any accommodations for his mental illness. Thus, at first it would appear that he does not allege injury from the state-court judgment, and that because he "asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). Indeed, the Supreme Court's reasoning in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), indicates that a claim is not inextricably intertwined with a prior state court judgment when the *purpose* of the federal action is "separable from and collateral to the merits of the state-court judgment." *Id.* at 21 (Brennan, J., concurring).

Our inquiry then requires us to ask whether the purpose of Guttman's ADA claim is separable from and collateral to the merits of the state-court judgment affirming the Board's revocation of his medical license. In order to facilitate this inquiry into the federal suit's purpose, we have held that when determining whether the federal plaintiff asserts a legal injury by an adverse party or by a state-court judgment, we must look to the *relief* sought, not simply to the issues raised. *Kenman Eng'g*, 314 F.3d at 476; *Crutchfield v. Countrywide Home Loans & Mortg. Elec. Registration Sys.*, 389 F.3d 1144, 1148 (10th Cir. 2004) (noting that although "a litigant may be able to make a federal claim appear unrelated to a state court judgment through artful pleading, the requested relief can quickly reveal whether *Rooker-Feldman* applies.").

We recognize that the state court's refusal to hear Guttman's ADA claims on the basis that they were not properly preserved for appeal complicates the issue before us. Guttman argues that his ADA claims have never been "actually decided," and are therefore separate from the

state-court judgment affirming his license revocation. We are not deprived of subject matter jurisdiction to hear Guttman's ADA claims, however, merely because they were first raised in state court. It is state-court judgments that trigger the jurisdictional bar of *Rooker-Feldman*, not state-court claims. In the instant case, the state court refused to exercise jurisdiction over the ADA claim, and hence did not decide it on the merits. *See Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 358 F.3d 694, 707 (10th Cir. 2004) (concluding that *Rooker-Feldman* does not bar a federal suit where a state court did not decide the federal claim on the merits); *Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir. 1998) (holding that where a state action does not reach the merits of a plaintiff's claims, *Rooker-Feldman* does not deprive the federal court of jurisdiction). Instead, we are deprived of jurisdiction over Guttman's ADA and § 1983 claims because they are but alternate routes to achieving his desired relief – judicial reinstatement of his medical license.

As Appellees argue before us, the state court found that the Board's decision was supported by substantial evidence reflected in the record and was not fraudulent, arbitrary, or capricious. That evidence includes the Board's finding that Dr. Guttman engaged in dishonesty and professional misconduct, which are grounds for revocation of his license separate from the Board's finding that the public could not be protected adequately from his mental illness through accommodations to his license. Therefore, because a New Mexico state court judgment affirmed the Board's decision as based on substantial evidence, we now lack jurisdiction to hear Dr. Guttman's ADA claim which is "inextricably intertwined" with the state court's merits decision. Through his ADA claim, Guttman would have us

disrupt or undo the New Mexico state court decision affirming his license revocation, needlessly duplicate judicial proceedings, and ignore congressional limitation of our judicial power under § 1257. Under *Rooker-Feldman*, we are jurisdictionally barred from doing so.

Guttman also argues that because New Mexico state courts refused jurisdiction over his ADA claim, he has been deprived of a full and fair opportunity to litigate this claim. Even if he has suffered such a deprivation, our Circuit has held that *Rooker-Feldman* "bars any suit that seeks to disrupt or 'undo' a prior state-court judgment, regardless of whether the state-court proceeding afforded the federal-court plaintiff a full and fair opportunity to litigate her claims." *Kenman Eng'g.*, 314 F.3d at 478. Other circuits have concluded, however, that where a litigant has not had a fair opportunity to *raise* a federal claim in state court proceedings, the *Rooker-Feldman* doctrine does not bar a subsequent federal action. *See e.g., Simes v. Huckabee*, 354 F.3d 823, 827 (8th Cir. 2004) ("the inextricably intertwined analysis may be inapplicable where federal plaintiffs have not been given a reasonable opportunity to raise their federal claims in the state proceedings."); *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 558 (7th Cir. 1999) ("an issue cannot be inextricably intertwined with a state court judgment if the plaintiff did not have a reasonable opportunity to raise the issue in state court proceedings."); *Moccio v. N.Y. State Office of Court. Admin.*, 95 F.3d 195, 198-99 (2d Cir. 1996) (noting that if "the plaintiff did not have an opportunity to present the claims in [state court] proceedings, the claims are not . . . barred by *Rooker-Feldman.*"). In the present case, Guttman was not deprived of an opportunity to raise his ADA claim in state court. To the extent that Guttman's

ADA claim was raised in state court and is inextricably intertwined with the state court's judgment, regardless of whether Guttman had a full opportunity to litigate the claim, *Rooker-Feldman* bars the action.

III

Even if the *Rooker-Feldman* doctrine did not bar his action, the district court found that Eleventh-Amendment immunity applied to Guttman's claim under Title II of the ADA against New Mexico and that absolute immunity applied to his § 1983 claims against defendants Khalsa and Parsons. Because we conclude that *Rooker-Feldman* deprives the district court of subject matter jurisdiction to hear Guttman's claims, we need not reach the merits of defendants' immunity defenses.

We hold that [sic] district court properly determined that it lacked subject matter jurisdiction under *Rooker-Feldman* and **AFFIRM**.

Stuart T. GUTTMAN, M.D. Plaintiff,

v.

G.T.S. KHALSA, Livingston Parsons, and the State of New Mexico Defendants.

No. CIV. 03-463 LCS.

United States District Court,
D. New Mexico

Sept. 15, 2003

Ian D. McKelvy, Roswell, NM, for Plaintiff.

Timothy S. Hale, Albuquerque, NM, for Defendants.

MEMORANDUM OPINION AND ORDER

SMITH, United States Magistrate Judge.

THIS MATTER is before the Court on Defendants' Motion for Summary Judgment, filed on May 28, 2003. The Court, acting upon consent and designation pursuant to 28 U.S.C. § 636, and having reviewed the Motion and considered the submissions of counsel, relevant authorities, and being otherwise fully advised, finds that this Motion is well-taken and should be **GRANTED**.

I. Background.

This case arises out of the revocation of Plaintiff's medical license by the New Mexico Board of Medical Examiners ("Board"). Plaintiff was granted a stipulated license to practice medicine in New Mexico on May 20, 1993. (Def.Ex. A.) The license was granted with stipulations due to Plaintiff's history of mental illness involving depression and post traumatic stress disorder ("PTSD").

(*Id.*) The stipulations on Plaintiff's license were lifted by the Board on or about May 19, 1995. (Compl.¶ 9.) On December 28, 1999, the Board directed Plaintiff to meet with an Impaired Physician Examining Committee based on a number of complaints regarding Plaintiff. (Def.Ex. D). Plaintiff met with the examining committee on January 10, 2000 in Albuquerque, New Mexico. On or about March 7, 2000, Plaintiff received a Notice of Contemplated Action and an Order of Summary Suspension from the Board based on Plaintiff's mental illness, allegations of false statements to the Board and inappropriate behavior with patients and hospital staff. (Def.Ex. B, C). Plaintiff appeared with counsel at an administrative hearing before the Board from October 23-25, 2000. The purpose of this hearing was to determine whether Plaintiff's license to practice medicine in the State of New Mexico should be revoked. Defendant Parsons acted as administrative hearing officer at this hearing and Defendant Khalsa acted as administrative prosecutor for the Board. The Board ordered that Plaintiff's license to practice medicine be revoked on February 28, 2001 based on dishonest statements made to the Board by Plaintiff and on findings of abusive and disruptive behavior by Plaintiff towards colleagues, hospital staff and patients. (Def.Ex. D). The Board further found that Plaintiff had a history of major depression, PTSD, and an underlying mixed personality disorder, that prior therapeutic treatment and prior intervention by Plaintiff's employers had been ineffective in changing Plaintiff's behavior, and that Plaintiff could not be effectively monitored with respect to his disruptive behavior. (*Id.*).

Plaintiff filed an appeal of the Board's decision in the Seventh Judicial District Court of New Mexico alleging

that the Board's decision was not supported by substantial evidence, that the decision of the Board was not in accordance with applicable law, that the decision was arbitrary, capricious and an abuse of discretion and that the decision did not comport with the requirements of Title II of the Americans with Disabilities Act ("ADA") (Def.Ex. E).

On January 30, 2003, the State Court issued an Order affirming the Board's revocation of Plaintiff's license. The court found that the Board's decision was based on substantial evidence, was within the Board's authority and based upon the law, and was not arbitrary, capricious or fraudulent. (Def.Ex. F.) The court further found that, because Plaintiff had not raised the allegation of ADA violations before the Board, this issue was not preserved for appeal. (*Id.*) As such, Plaintiff's ADA claims were not considered by the court. (Def.Ex. F). Plaintiff's Motion for Reconsideration to the New Mexico Court of Appeals and petition for *certiorari* to the New Mexico Supreme Court were denied. (Def.Ex. G, H.) Plaintiff has exhausted all avenues available to him in state court pursuant to 28-1-13 NMSA 1978.

Defendants argue that they are entitled to summary judgment because Plaintiff has not stated a claim for violation of his Procedural Due Process rights under 42 U.S.C. § 1983 or for violations of Title II of the ADA and because jurisdiction is improper before this Court.

II. Standard

A motion for summary judgment may be granted only when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P 56(c). Summary judgment is

proper when the pleadings, depositions, answers to interrogatories and admissions on file, as well as any affidavits "show that there is no genuine issue as to any material fact." *Id.* When applying this standard, the Court examines the record and reasonable inferences in the light most favorable to the non-moving party. *See Simms v. Oklahoma ex rel. Dep't of Mental Health & Substance Abuse Servs.*, 165 F.3d 1321, 1326 (10th Cir.1999).

The movant bears the initial burden of establishing that no genuine issue exists as to any material fact. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Electric indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)). The movant's initial burden may be discharged by showing there is an absence of evidence to support the non-moving party's case. *See Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant meets its burden, the burden shifts to the non-moving party to demonstrate a genuine issue for trial on a material matter. *See McGarry v. Pitkin Co.*, 175 F.3d 1193, 1201 (10th Cir.1999).

III. Analysis

Plaintiff brings this action under Title II of the Americans with Disabilities Act ("ADA") and under 42 U.S.C. § 1983. Defendants contend they are entitled to summary judgment on the grounds that this Court lacks subject

matter jurisdiction over Plaintiff's claims and that the immunity of Defendants Khalsa and Parsons and the State of New Mexico is well established under Tenth Circuit law.

a. *Rooker-Feldman* as a Bar to Jurisdiction

Defendant contends that this Court lacks subject matter jurisdiction over Plaintiff's claims under the *Rooker-Feldman* Doctrine.[1] Under *Rooker-Feldman*, a party who loses in a state court proceeding is barred "'from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Kiowa Indian Tribe of Okla. v. Hoover,* 150 F.3d 1163, 1169 (10th Cir.1998) (quoting *Johnson v. DeGrandy,* 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994)). Federal review of state court judgments can be obtained only in the United States Supreme Court. 28 U.S.C. § 1257. The *Rooker-Feldman* doctrine therefore prohibits a lower federal court from considering claims actually decided by a state court and claims "inextricably intertwined" with a prior state-court judgment. *See Kenmen Engineering v. City of Union,* 314 F.3d 468, 473 (10th Cir.2002).

Plaintiff asserts that *Rooker-Feldman* does not apply to the present case because Plaintiff did not have a full and fair opportunity to litigate his ADA claims in the prior state proceeding. However, in *Kenmen*, the Tenth Circuit

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[1] *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust,* 263 U.S. 413, 416, 44 S.Ct. 149, 68 L.Ed. 362 (1923).

ruled that application of the *Rooker-Feldman* doctrine was appropriate despite the fact that the federal court plaintiff had no opportunity to litigate a particular claim in a state court proceeding. *Id.* at 478. *Rooker-Feldman* bars any suit seeking to undo a prior state court judgment, regardless of whether the state proceeding afforded Plaintiff a full and fair opportunity to litigate his claims. *Facio v. Jones,* 929 F.2d 541, 544 (10th Cir.1991). The fact that the state court declined to hear Dr. Guttman's ADA claims does not provide this Court with jurisdiction to hear those claims.

Plaintiff also contends that, because the State court refused to hear Dr. Guttman's ADA claims, these claims are not "inextricably intertwined" with that court's judgment within the meaning of *Rooker-Feldman* and therefore can be raised by Plaintiff in this Court. This contention must be rejected. The Supreme Court has identified two categories of cases that fall outside of *Rooker-Feldman's* "inextricably intertwined" formula. First, a party may bring a general constitutional challenge to a state law, provided that: 1) the Party does not request that the federal court upset a prior state-court judgment applying that law against the party, *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482-86, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). and 2) the prior state-court judgment did not actually decide that the state law at issue was facially constitutional. *Kenmen* at 476. (quoting *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923)). Second, a party may challenge state procedures for enforcement of a judgment where consideration of the underlying state-court decision is not required. *Pennzoil Co. v. Texaco, Inc.,* 481 U.S. 1, 26, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987).

The present action does not fall within either of these exceptions to the *Rooker-Feldman* jurisdictional bar. Although Plaintiff contends in his Surreply that he is not intending a review of the state court decision, Plaintiff seeks prospective injunctive relief and damages under the ADA which requires a review of the state court decision. It is clear that Plaintiff's injury resulted from the state-court judgment, that his complaint in this Court seeks to upset that judgment and that the resolution of Plaintiff's federal claims necessarily requires consideration of the underlying state-court decision. *Kenmen,* 314 F.3d at 476.

Because Plaintiff's claims fall directly within the parameters of *Rooker-Feldman*. these claims are not reviewable by this Court. However, as discussed *infra,* Plaintiff would be entitled to no relief even if this Court had jurisdiction to consider his claim.

b. Plaintiff's Claims against Defendants Parsons and Khalsa

Plaintiff alleges that Defendants possessed a bad faith intent to discriminate against him in violation of 42 U.S.C. § 1983 and Title II of the ADA and that Defendants Khalsa and Parsons singled Plaintiff out for discrimination because of a knowledge of Plaintiff's mental illness. Plaintiff has not presented any evidence tending to prove this contention.

Plaintiff argues that he may appropriately bring suit against state officials, even if they claim to be acting under state law, for conduct by the officials that constitutes an ongoing violation of federal law. For this proposition, Plaintiff cites *Elephant Butte Irrigation District of New Mexico v. Dep't of the Interior,* 160 F.3d 602, 609 (10th

Cir.1998). Plaintiff's reliance on this authority is misplaced. In *Elephant Butte,* the acts of state officials constituted a conflict with federal law at the inception of the state action in question. *Id.* In the present case, officials Khalsa and Parsons were acting pursuant to New Mexico state law. However, Plaintiff does not argue that New Mexico state law is invalid, nor does Plaintiff claim that the State of New Mexico was authorizing its officials to violate federal law. Indeed, Plaintiff appears to make no claim at all regarding the validity of New Mexico state law. Plaintiff's cited authority is therefore inapplicable to the case at bar.

Plaintiff further contends that Defendant Khalsa is not entitled to immunity because he was involved in administrative duties and investigatory work, which does not fall within the scope of immunity traditionally afforded to officials acting as prosecutors. Plaintiff also argues that Defendants Khalsa and Parsons acted in bad faith and, as such, are not entitled to immunity from suit. For this contention, Plaintiff cites *Buckley v. Fitzsimmons,* 509 U.S. 259, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993). Plaintiff's reliance on this authority is misplaced.

The Supreme Court in *Buckley* declined to withhold all immunity from prosecutors acting in an investigative or administrative capacity. *Id.* at 265, 113 S.Ct. 2606. Instead, the Court held that these individuals were entitled to qualified immunity. *Id.* The Supreme Court further held that acts undertaken by a prosecutor in preparation for the initiation of judicial proceedings or trial are entitled to absolute, rather than qualified, immunity. *Id.* at 273, 113 S.Ct. 2606. The actions of Defendants Khalsa and Parsons fall within the Supreme Court's provisions for

absolute immunity and as such, the acts of Khalsa and Parsons are not amenable to suit by Plaintiff.

The Tenth Circuit has previously dealt with agency adjudications in the context of medical licensing and determined that, because such agencies perform functions analogous to a court of law, agency members are entitled to absolute immunity from suit. *Horwitz v. State Board of Medical Examiners,* 822 F.2d 1508 (10th Cir.1987). Traditionally, administrative officials have been afforded absolute immunity when performing functions analogous to those of judges and prosecutors. *Butz v. Economou,* 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978). Absolute immunity is to be granted in those situations where, 1) the officials' functions are similar to those involved in the judicial process, 2) the officials' actions are likely to result in damages lawsuits by disappointed parties, and 3) there are sufficient safeguards in the regulatory framework to control unconstitutional conduct. *Id.* These requirements are satisfied in the present case. At the agency hearing, the functions of Defendants Khalsa and Parsons were clearly similar to those involved in the judicial process. The actions of Khalsa and Parsons did in fact result in a suit for damages and injunctive relief by the Plaintiff and there were sufficient safeguards in the regulatory framework, including an appeal of the Board's decision in state court, to control any potential unconstitutional conduct by Defendants.

The Tenth Circuit has recognized a strong public policy in favor of affording absolute immunity from damages liability under 42 U.S.C. § 1983 to agency officials who perform functions that are adjudicatory and/or prosecutorial in nature. *Horwitz,* 822 F.2d at 1515. The Court noted that there is a strong need to insure that individual

Board members perform functions for the public good free from harassment or intimidation. *Id.* In responding to a complaint closely analogous to that now before this court, the Court explained, "It is important to insulate Board members from political influences in meeting their adjudicatory responsibilities in the adversarial setting involving licensure to practice medicine." *Id.* Under Tenth Circuit law, public policy requires that officials serving in such an adjudicatory capacity be exempted from personal liability. *Id.*

c. Plaintiff's Claims against Defendant State of New Mexico

Plaintiff next argues that the State of New Mexico is a proper defendant under his ADA and Procedural Due Process claims. With regard to Plaintiff's claims under, 42 U.S.C. § 1983, the State of New Mexico is not a proper Defendant. *Monell v. Dep't of Social Services,* 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Regarding Plaintiff's ADA claims, Plaintiff contends he has brought a claim under Title II of the ADA, for which sovereign immunity has been either abrogated or waived by the State of New Mexico. This contention fails for several reasons.

The ultimate guarantee of the Eleventh Amendment is that nonconsenting states may not be sued by private individuals in federal court. *Board of Trustees of the University of Alabama v. Garrett,* 531 U.S. 356, 363, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). Congress may nevertheless abrogate the Eleventh Amendment guarantee pursuant to Section 5 of the Fourteenth Amendment, which grants to Congress the power to enforce the substantive guarantees contained in Section I of the Amendment through the enactment of appropriate legislation. *Id.* at 364-65, 121 S.Ct. 955.

Plaintiff correctly points out that the Supreme Court declined to decide whether Congress had abrogated the sovereign immunity of states under Title II of the ADA. *Id.* at 360, 121 S.Ct. 955. However, the Tenth Circuit has dealt with this issue with respect to Title II and found that Title II is not a valid abrogation of the states' Eleventh Amendment immunity. *Thompson v. Colorado,* 278 F.3d 1020, 1034 (10th Cir.2001). Therefore, under Tenth Circuit law, Plaintiff cannot join the State of New Mexico in a claim under Title II of the ADA.

Even without the Tenth Circuit's guidance on Title II, it is still apparent that the State of New Mexico has not chosen to abrogate its immunity under Title II of the ADA. Only unequivocal actions by a state will support a determination that the state has waived sovereign immunity. *Pennhurst State School & Hosp. v. Halderman,* 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984). Whether a state's attorney general has waived sovereign immunity on behalf of the state depends on two questions: 1) whether the action taken by the attorney general is sufficient to constitute a waiver, and 2) whether the attorney general has the authority under state law to waive the state's sovereign immunity. *See, AFSCME v. Corrections Dep't of New Mexico,* 783 F.Supp. 1320, 1327 (D.N.M.1992).

The Plaintiff has made no showing that the attorney general of New Mexico unequivocally intended to waive the State's sovereign immunity. Only unequivocal expressions by a State will support a waiver of immunity. *Id.* Furthermore, Plaintiff has made no showing that the Attorney General of New Mexico has any authority to waive the State's sovereign immunity. Section 8-5-2 NMSA (1978 Comp.), which specifies the powers of the Attorney General, does not expressly confer on the Attorney General

the authority to waive Eleventh Amendment immunity. Plaintiff therefore has failed to make out a case that either Congress or the State of New Mexico intended to waive the state's sovereign immunity with respect to Title II of the ADA and Plaintiff's claims must therefore fail.[2]

IV. Conclusion

Upon review of the evidence presented on this Motion for Summary Judgment, this Court has determined that this [sic] it lacks jurisdiction to hear Plaintiff's claims under *Rooker-Feldman*. Furthermore, all named Defendants are entitled to absolute immunity as to Plaintiff's claims under 42 U.S.C. § 1983 and Title II of the ADA. Accordingly, Defendants' Motion for Summary Judgment, filed on May 28, 2003, shall be **GRANTED**.

Defendant's Motion for Leave to file a Surreply and Memorandum in support (*Doc. 17*) is hereby **DENIED AS MOOT**.

A SUMMARY JUDGMENT CONSISTENT WITH THIS OPINION SHALL ISSUE.

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[2] Defendant further contends that Plaintiff has not satisfied the administrative requirements for filing suit under the ADA. However, Title II of the ADA does not require Plaintiff to exhaust all remedies before bringing suit. *Davoll v. Webb*, 194 F.3d 1116, 1124 (10th Cir.1999). Although Plaintiff has satisfied the requirements for bringing suit under Title II of the ADA, his claims must fail because Defendants are entitled to immunity.

IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

STUART T. GUTTMAN,

Petitioner-Appellant,

vs.

NEW MEXICO BOARD OF MEDICAL EXAMINERS,

Respondent-Appellee. /

No. 23,809
Sierra County
D-0721-CV-2001-49

ORDER

(Filed Apr. 10, 2003)

This matter came before this Court on **Petitioner Stuart T. Guttman's** Motion For Reconsideration. Assuming without deciding that Petitioner has demonstrated unusual circumstances for the untimely filing of said Petition, we have considered the Petition as if it were timely. *See Serna v. Board of County Comm'rs*, 88 N.M. 282, 284, 540 P.2d 212, 214 (1975) (untimely petition for writ of certiorari must be denied absent unusual circumstances justifying late filing); *Hyden v. N.M. Human Servs. Dept.*, 2000-NMCA-002, ¶ 4, 128 N.M. 423, 993 P.2d 740 (granting petitions where unusual circumstances were shown).

THIS COURT ORDERS that the petition is **DENIED** on the merits.

/s/ James J. Wechsler
JAMES J. WECHSLER,
Chief Judge

/s/ Ira Robinson
IRA ROBINSON, Judge

/s/ Michael Vigil
MICHAEL E. VIGIL, Judge

THE SUPREME COURT OF
THE STATE OF NEW MEXICO
May 16, 2003

NO. 28,042

STUART T. GUTTMAN,

Plaintiff-Petitioner,

vs.

NEW MEXICO BOARD OF MEDICAL EXAMINERS,

Defendant-Respondent.

ORDER

This matter coming on for consideration by the court upon petition for writ of certiorari, and the Court having considered said petition, and being sufficiently advised, Chief Justice Petra Jimenez Maes, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Richard C. Bosson, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is denied in Court of Appeal number 23809.

IT IS SO ORDERED.

WITNESS, The Hon. Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 16th day of May, 2003.

(SEAL) /s/ Madeline Garcia
Madeline Garcia, Chief Deputy Clerk

STATE OF NEW MEXICO
COUNTY OF SIERRA
SEVENTH JUDICIAL DISTRICT COURT

STUART T. GUTTMAN,

Petitioner,

vs. No. D-0721-CV-2001-49

NEW MEXICO BOARD OF MEDICAL EXAMINERS,

Respondent.

ORDER AFFIRMING REVOCATION OF MEDICAL LICENSE

(Filed Jan. 30, 2003)

THIS MATTER came before the Court upon the appeal by Stuart T. Guttman of the revocation by the Board of Medical Examiners of the medical license of Stuart T. Guttman. The Court, having considered the pleadings on file in this case, including the Record Proper, **FINDS** that the revocation by the Board of Medical Examiners of the medical license of Stuart T. Guttman was within the Board's authority and based upon the law, was based upon substantial evidence as shown in the record, and was not fraudulent, arbitrary, or capricious. The Court further finds that the Petitioner did not raise the issue of Americans with Disabilities Act compliance before the New Mexico Board of Medical Examiners so that the New Mexico Board of Medical Examiners could consider and act or rule upon that issue. Accordingly, Petitioner failed to preserve the Americans with Disabilities Act issue for appeal.

IT IS, THEREFORE, ORDERED THAT the decision of the Board of Medical Examiners to revoke Petitioner Stuart T. Guttman's medical license be, and hereby is, affirmed.

/s/ Kevin Sweazea
KEVIN R. SWEAZEA
District Judge, Division III

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(3)

No. 04-1667

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

STUART T. GUTTMAN, M.D.,

Petitioner,

v.

G.T.S. KHALSA, LIVINGSTON PARSONS, M.D. and THE STATE OF NEW MEXICO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Appellant challenges whether the *Rooker-Feldman* doctrine bars federal-court jurisdiction when the federal proceedings were initiated before parallel state-court proceedings were completed.

2. Appellant challenges whether the *Rooker-Feldman* doctrine bars federal-court consideration of issues that the Petitioner lacked a reasonable opportunity to litigate in state court.

3. Appellant challenges whether the *Rooker-Feldman* doctrine applies simply because a state court failed to remedy an injury the defendant caused Petitioner.

4. Appellant challenges whether the *Rooker-Feldman* doctrine bars a federal-court challenge asserting that a state administrative agency decision violates federal law where the Petitioner unsuccessfully sought "arbitrary and capricious" or "substantial evidence" judicial review of the agency's decision in state court.

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STATEMENT OF THE CASE

In general terms, this case involves the revocation of Petitioner's medical license. His medical license was revoked by the New Mexico Board of Medical Examiners (the "Board") based on his inability to practice medicine with reasonable skill or safety to his patients, his dishonesty, and his abusive and disruptive behavior which was unbecoming a person licensed to practice medicine. The Board found Petitioner was a danger to the safety of his patients, employees and colleagues and that his mental illness could not be corrected or accommodated. Petitioner appealed the Board's decision in New Mexico state district court and also claimed that his rights had been violated for failure to accommodate his mental illness in violation of the Americans with Disabilities Act ("ADA"). The New Mexico state court upheld the revocation and dismissed his ADA claims as he had failed to preserve the issue below and the New Mexico State Court of Appeals affirmed. Petitioner, instead of properly appealing the district court's dismissal of his ADA claim to the New Mexico Supreme Court, then attempted an "end-run" around the final judgement of the New Mexico Court of Appeals by filing a complaint in the United States District Court for the District of New Mexico. No appeal was pending in the New Mexico State Court at the time of federal court filing. Petitioner then filed his petition for certiorari before the New Mexico Supreme Court. His petition for certiorari was denied. The federal court then dismissed Petitioner's complaint based on lack of jurisdiction under the *Rooker-Feldman* doctrine and on immunity of the Respondents. Petitioner appealed this decision and the Tenth Circuit properly affirmed this decision finding that the relief sought was "inextricably intertwined" with that of the state court and that Petitioner's federal filing sought to overturn

the state court's judgment. The facts show that Petitioner sought to overturn the Board's findings after his license was revoked and filed his appeal with the state district court and sought reinstatement of his license. After being denied relief in state district court, Petitioner appealed to the New Mexico Court of Appeals and the New Mexico Supreme Court. Both appeals were considered and then denied. Petitioner objected to the outcome in the state court of appeals and filed a separate pretextual suit seeking reinstatement of his license in the federal court action. The chronology below proves Petitioner's federal law complaint is barred by *Rooker-Feldman.*

1. To be specific, on or about January 10, 2000, Petitioner met with an examiner's committee pursuant to NMSA 1978 § 61-7-4 (2003). C.A. App. 13. On January 25, 2000, the Board received the report of the Impaired Healthcare Provider Examining Committee. C.A. App. 12-15, 16. On March 7, 2000, the Board temporarily suspended Petitioner's license to practice medicine. C.A. App. 16. Thereafter, the parties conducted extensive discovery through counsel. On October 17, 2000, Petitioner's attorney filed an Alternative Writ of Mandamus to stay the disciplinary proceedings in the state district court, which was denied. On February 28, 2001, following a three day hearing, the Board issued an order revoking Petitioner's license to practice medicine. C.A. App. 18-27. The Board entered Findings of Fact and Conclusions of Law. Before and during the hearing, Petitioner was represented by counsel and given a full opportunity to present evidence. At the conclusion of the hearing, the Board specifically found:

- Petitioner has an underlying mixed personality disorder;

- Petitioner suffers from major depression, post-traumatic-stress disorder;

- Petitioner's past treatment and intervention by employers and associates was not effective in treating Petitioner's behavior; and

- Petitioner could not be effectively monitored.

C.A. App. 22-23. These findings supported the Board's conclusion that Petitioner posed a threat to the safety of his patients and required the Board to revoke his medical license. C.A. App. 7-8. Moreover, the Board after making specific findings regarding Petitioner's psychological conditions further concluded, based on the medical testimony, concluded that his mental illness could not be monitored. C.A. App. 23.

2. When Petitioner appealed the Board's decision in the Seventh Judicial District Court, County of Sierra, State of New Mexico, Cause No. CV-2001-00049, pursuant to NMSA 1978 §§ 61-1-17, -10, and 39-3-1.1 (2003) Petitioner extensively argued the merits of his ADA claim in his Statement of Appellate Issues. C.A. App. 45-47. Petitioner argued that was regarded as having an impairment within the ADA and that he believed he could practice medicine with accommodation. C.A. App. 46. No surprisingly, Petitioner's argument failed to address the Board's findings that his mental illness could not be monitored, and thus accommodated, such that he would not endanger his patients, employees, colleagues, or the general public. Petitioner fully raised and argued his ADA claim in his state district court appellate brief. C.A. App. 28. On January 30, 2003, the State District Court, after considering the evidence and the record

below, affirmed the Board's decision to revoke Petitioner's licence. C.A. App. 49. The state district court failed to consider the claim because he did not properly preserve the issue. Petitioner then, untimely, petitioned for *certiorari* to the New Mexico Court of Appeals. The New Mexico Court of Appeals noted that Petitioner set forth unusual circumstances for the untimely filing of his petition and considered the petition on the merits even though it was untimely. On April 10, 2003, the court denied the petition on its merits. C.A. App. 50.

3. On April 17, 2003, Petitioner, *pro se*, filed suit in the District Court of the United States for the District of New Mexico inappropriately attempting to invoke that court's federal question jurisdiction alleging violations of the ADA and violations of Procedural Due Process in hopes of reversing or modifying the New Mexico court decisions. Respondents then filed their motion for summary judgment and all parties fully briefed the issues.

The United States District Court for the District of New Mexico ruled that it lacked jurisdiction based on the *Rooker-Feldman* Doctrine and that the Respondents, the Hearing Officer, the Administrative Prosecutor, and the State of New Mexico, were entitled to immunity from suit under 42 U.S.C. § 1983 and Title II of the ADA.

4. On April 21, 2003, Petitioner appealed the New Mexico State Court of Appeals decision to the New Mexico Supreme Court. On May 21, 2003, the court denied his petition for relief. C.A. App. 51.

5. Finally, in December 2003, Petitioner, through counsel, then appealed to the United States Court of Appeals for the Tenth Circuit. The Tenth Circuit affirmed the lower

court's ruling acknowledging that Petitioner's ADA claims were not actually decided, but concluded that because his ADA claims were "inextricably intertwined" with the state court's judgment, *Rooker-Feldman* barred the action. *Guttman v. G.T.S. Khalsa, et al.*, 401 F.3d 1170, 1175 (10th Cir. 2005).

REASONS FOR DENYING THE PETITION

Petitioner has carefully crafted his issues in hopes of eliciting a determination that the recent decision, *Exxon Mobil*, does not anticipate or provide guidance to the lower courts in cases such as this. Petitioner is incorrect. However, under the facts of this case if the Court were to remand this case for further consideration the Tenth Circuit would be left with only two options: overturn the state court judgment as the relief requested is "inextricably intertwined" or uphold the finding of the lower federal court finding that the Respondents are immune from suit, thus affirming the revocation of Petitioner's license. Remanding this case for further consideration by the Tenth Circuit would also create an avenue for future plaintiffs to request the federal courts to review state court judgments instead of following the proper appellate procedure of exhausting their appeals in the state courts and then seek relief in this Court. This result would be contrary to 28 U.S.C. § 1257(a) and would result in an erosion of federalism. It is an undisputed fact that Petitioner failed to exhaust his state court remedies. Instead, Petitioner requests this court allow reversal or modification of the New Mexico Board of Medical Examiner's and the resulting appeals in the New Mexico State Court. Petitioners' claims are barred under *Rooker-Feldman* because the relief sought is the same in state as federal court.

This is not a case, as Petitioner contends, where a plaintiff initiated federal litigation before the conclusion of the state court proceedings. Petitioner initiated the cause of action in federal court fourteen days after final order of the New Mexico Court of Appeals was entered. He raised his claim for accommodation based on his mixed personality disorder in state district court, which rendered a judgment federal courts must give full faith and credit just as any other court in New Mexico would and reserve the assertion of jurisdiction. Under the full faith and credit clause, *Rooker-Feldman* applies to lower state court judgments as well as the judgment of the highest court of the state. 28 U.S.C. § 1738; *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 199 (4th Cir. 2000). Failure to uphold the state court's judgment would erode the independence of state courts. The *Rooker Feldman* doctrine "reinforces the important principle that review of state court decisions must be made to the state appellate courts, and eventually to the Supreme Court, not by federal district courts or courts of appeal." *Id.* at 199 (internal citations omitted). Accordingly, this Court should deny Petitioner's writ of certiorari, affirm the Tenth Circuit, and uphold the New Mexico State Courts' judgments revoking Petitioner's medical license. The Board's decision was made after extensive litigation and trial, resulting in the fact-finding body concluding that he is a danger to the patients, his staff, his colleagues, and the general public. This evidence remains uncontroverted.

Petitioner seems to ignore the facts of the underlying case because the facts dictate that plenary review is not needed in this case. As the public records show, the Board sent their notice of contemplated action on March 7, 2000. Since then, Petitioner has had four separate attorneys represent him and only with the assistance of his new attorney

is there some claim that the United States Supreme Court needs to be involved in this case. Petitioner's assertion attempts to disregard the facts under which this claim has come before the Court. This is not the appropriate case for resolving the alleged conflicts between the circuits as to the correct application of the *Rooker-Feldman* doctrine is erroneous. The federal court could not, without violating the full faith and credit clause, grant Petitioner the relief he requested. Moreover, the facts support affirming all the lower tribunal decisions.

Petitioner advocates review of this case by narrowly categorizing the opinions of the circuit courts into categories: 1) those that do not versus those that do require a full and fair opportunity to litigate their claims and 2) those that preclude litigation based on preclusion principles rather than *Rooker-Feldman* versus those cases where the relief requested was "inextricably intertwined" with that of the state court judgment. Even if the Tenth Circuit had anticipated *Exxon Mobil*, Petitioner still would not be afforded the relief that he requested as it would require overturning the Board's and the state courts' rulings revoking Petitioner's medical license. Moreover, Petitioner was not deprived of any forum to assert his ADA claim as he could have petitioned this Court to review the state court's decision dismissing his ADA claim rather than inappropriately seeking review of the state court's decision in federal court. Instead, Petitioner tried to re-litigate the decision in federal court, which is precisely the type of filing bound by *Rooker-Feldman*.

I. THE TENTH CIRCUIT PROPERLY FOUND THAT THE *ROOKER-FELDMAN* DOCTRINE DIVESTED IT OF JURISDICTION TO REVIEW THE STATE COURT'S JUDGMENT

The *Rooker-Feldman* doctrine is the result of two cases decided sixty years apart, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The proposition of the doctrine was recently clarified in *Exxon Mobil Corp. v Saudi Basic Industries Corp.*, 125 S.Ct. 1517 (2005). The doctrine divests a federal court of jurisdiction when the petitioner's claim would be a direct or collateral attack on a state court's judgment. The basis of this jurisdictional prohibition is statutory. Twenty-eight U.S.C. §1257 reserves review of state court decisions to this Court, whereas the jurisdiction of federal courts is strictly original. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). "Under 28 U.S.C. §1738, federal courts must give the same preclusive effect to a state-court judgment as another court of that State would give." *Exxon Mobil Corp. v Saudi Basic Industries Corp.*, 125 S.Ct. at 1521-22 (internal citations omitted). Thus, *Rooker-Feldman* is the proper doctrine to preclude review of a state court decision by a federal court when, as in this case, the state appellate court had entered a final judgment on the merits with no pending appeal. *See id.*

After the state court of appeals entered judgment on the merits, Petitioner sought review of those claims in federal court. This case falls within the now narrowed and clarified scope of *Rooker-Feldman*. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S.Ct. 1517 (2005). *Exxon Mobil* clarified the applicable scope of the doctrine which had previously been "construed to extend far beyond the contours

of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." *Id.* at 1521. *Exxon Mobil* delineates the scope of the *Rooker-Feldman* doctrine. Petitioner's assertion that the circuit courts remain divided is overreaching and loses sight of the relief sought by this Petitioner. Petitioner acknowledged at the extensive hearing before the Board that he had a mixed personality disorder and mental illness. Petitioner attempted to use his psychological condition as an excuse for his conduct. He asked the Board to accommodate his illness by allowing him to retain his license. The Board, based on all the evidence, found that he was a threat to the public and that the Board could not accommodate his mental illness. Clearly, Petitioner lost his claim that he could safely practice medicine. The Board's decision was affirmed by two New Mexico Courts before filing his complaint in federal court. Petitioner seeks to persuade another forum using the same argument that he can safely practice medicine. *Rooker-Feldman* bars Petitioner's attempt to get another swing at the place at a new ballpark and it removes the bat from Petitioner as he already has had four strikes at the plate in the previous ballparks.

Petitioner's license was revoked by the Board. Petitioner then appealed the revocation in state district court and argued he had a claim for violation of the ADA. The state district court affirmed the revocation of Petitioner's medical license and further found that Petitioner did not preserve his claim under the ADA and dismissed the ADA claim. It was the dismissal of Petitioner's state court appeals that prompted Petitioner to file the federal court action. In filing the federal court action complaining violation of his rights under the

ADA, Petitioner attempted an "end-run" around the state appellate court's decision. The decision of the state court, erroneous or not, is not actionable in federal court. *Long v. Shorebank Development Corp.*, 182 F.3d 548, 554-55 (7th Cir. 1999) (stating where the acts of defendants, including fraud, precluded the plaintiff from raising a defense or any claims on her behalf and were thus not precluded under *Rooker-Feldman*). Petitioner is seeking federal review of a state court judgment and requesting the federal court reject the state's revocation of his license.

Exxon Mobil does not shed new light as this case fits squarely within the *Rooker-Feldman* doctrine as expressed by this Court. The Tenth Circuit's decision should be affirmed as this is a case "brought by [a] state-court loser[] complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."

II. PETITIONER WAS NOT DENIED A REASONABLE OPPORTUNITY TO RAISE HIS ADA CLAIMS BUT FAILED TO PROPERLY FOLLOW APPELLATE PROCEDURES

Petitioner's contention that he must be afforded a full and fair opportunity to litigate his claims not only blurs the distinction between *Rooker-Feldman* and the preclusion doctrines, but also amounts to eviscerating the "inextricably intertwined" analysis of the *Rooker-Feldman* doctrine. The elimination of the "inextricably intertwined" analysis ultimately results in the ability of a federal court to not only review a state court's decision but overturn a judgment in violation of the full faith and credit clause.

Petitioner attempts to first categorize the decisions of the circuit courts into those that require a full and fair opportunity to litigate claims, which includes the Ninth and Tenth Circuits, and those which require that the claims be fully and fairly litigated in state court before barring federal court's jurisdiction. Regardless of whether the categorization is correct, this case is not one where resolution of the conflict is necessary. Petitioners' mental illness and the inability to make reasonable accommodations was litigated in the administrative proceeding. Medical evidence was presented establishing Petitioner's mental disorder. In fact, the Board appointed a panel of physicians to examine and evaluate Petitioner. Thereafter, the Board reviewed the evidence of his mental disorder. In addition to the Petitioner's mental disorder, the Board made specific findings that the Petitioner was dishonest to the Board Examiners. Subsequently on appeal, Petitioner had the opportunity to raise and in fact did raise his ADA claim in state court. When the claim was dismissed, instead of following the proper appellate procedure of first seeking relief from the revocation of his license in the New Mexico Supreme Court, after being denied relief by the New Mexico Court of Appeals, and then applying for a writ of certiorari from this Court if he was still denied relief, Petitioner inappropriately filed a claim in federal court. Thus, Petitioner did raise his ADA claim, even though the court found he did not properly preserve the issue. Petitioner cannot now file an action in federal court if he failed to preserve the issue in state court.

Review of the circuit court decisions cited by Petitioner reveals that the facts of each case do not permit for such simple categorizations. A court cannot just simply look at the issues raised in determining whether jurisdiction is barred under *Rooker-Feldman*; A court must also look at the relief

sought. This Court originally articulated the *Rooker-Feldman* doctrine stating,

> If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application, then the District Court is in essence being called upon to review the state court decision. This the District Court may not do.

D.C.Court of Appeals v. Feldman, 460 U.S. 462, 483 n. 16 (1983). This Court further stated that the doctrine precluded the United States District Court from hearing challenges to state court decision, even if those challenges allege that the decision of the state court was unconstitutional. *Id.* at 486. *Feldman* did not limit the use of the doctrine simply to review of claims or issues, but rather the relief sought and the result on the decision rendered in state court. If a court only looks to the issues or claims raised as done for preclusion doctrines, the line between *res judicata*, collateral estoppel and *Rooker-Feldman* become blurred. *Bianchi v. Rylaarsdam*, 344 F.3d 895, 900 (9th Cir. 2003).

If a claim has been raised in state court with jurisdiction over the matter, the proper procedure is to exhaust state court remedies and then appeal to this Court. If however, the issue has not been raise in state court and is not inextricably intertwined with the state court judgment, the federal court has jurisdiction to hear the matter. In this case, Petitioner sought accommodation from the Board for his psychologic disorder. After considering all the evidence and expert and lay testimony at trial, the Board determined that his behavior could not be accommodated. The Board found that

Petitioner's prior psychological treatment had been unsuccessful and he still posed a threat to the safety of his patients, his employees, his colleagues, and the general public. He appealed to the state district court. The state district court affirmed the Board's decision. He appealed to the New Mexico Court of Appeals, which affirmed the district court. Petitioner now seeks to have the federal court overturn these findings of fact and compel the Board to accommodate his mental illness. Petitioner should have appealed this allegedly erroneous dismissal to the state supreme court and then to this Court instead of doing an "end-run" in federal court in hopes of overturning the state court decision.

The conflict that Petitioner claims exists among the circuits is tangential to the facts of this case. Petitioner raised his ADA claim during the hearing before the Board and then again in state court. The state district court found that Petitioner did not preserve his appeal regarding his ADA claim. Petitioner appealed the court's ruling and in fact appealed an issue which was supported by substantial evidence. Moreover, under the ADA, in order for the worker to have a claim, the worker must be able to work with no or with reasonable accommodations. The Board made specific findings, which were affirmed on appeal, that no treatment would help change Petitioner's behavior, could not be monitored and therefore Petitioner could not continue to work. Thus, there was no viable claim under the ADA because there were no reasonable accommodations available. The Board found Petitioner posed a threat to the community and public. Petitioner's claim that he did not litigate or have the opportunity to litigate his claim is without merit.

III. THE ALLEGED DIVISION OF THE CIRCUIT COURTS IS TANGENTIAL TO THE FACTS OF THIS CASE

The *Rooker-Feldman* doctrine bars federal jurisdiction for two categories of claims: 1) those actually decided by a state court or 2) those which are "inextricably intertwined" with a state court judgment. *Pittsburgh County Rural Water District No. 7 v. City of McAlester*, 358 F.3d 694 (10th Cir. 2004). Petitioner's claims meet the requirement of both categories such that this case should be dismissed for lack of subject matter. As both categories are met by the facts of this case, this Court does not need to reach the alleged division of the circuits regarding whether jurisdiction is barred when the challenge is not a result of the state court's action or whether it is a result of defendant's actions.

This appeal amounts to a direct review of the Board of Medical Examiners' findings and the New Mexico state court's decision which upheld the revocation of Petitioner's license as he was found to be a threat to the safety of his patients, employees and colleagues. The Board made specific findings that his mental illness could not be accommodated to protect the public from his aberrant behavior. C.A. App. 23. Petitioner argued his ADA claims throughout his appeal in the state court forum. On appeal, Petitioner presented twelve letters to the Board on his behalf regarding his psychiatric condition and accommodations. The dismissal of Petitioner's claims for relief is what prompted Petitioner filing suit in federal court. Thus, any review of this matter by the federal court would be a direct review of the New Mexico State Court decisions.

Petitioner's claims are also "inextricably intertwined"with those of the state court claim decision. The Tenth Circuit upholds the proposition that Petitioner advocates; A case is "inextricably intertwined" if the "state-court judgment *caused*, actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress*." *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 476 (10th Cir. 2002) (emphasis in original).

Petitioner seeks reinstatement of his medical license, which is the same relief requested from the Board and denied by the Board and the New Mexico State Courts. The revocation was not based solely on Petitioner's mental condition. The Board found that his dishonesty in addition to his abusive and disruptive behavior, was unbecoming a licensed physician. The revocation was based on two separate findings. Whether Petitioner is entitled to damages, including the reinstatement of his license to practice medicine would clearly require a review of the New Mexico state court decisions. These claims are "inextricably intertwined" such that the relief sought in federal court is exactly the same relief that Petitioner sought in state court. Petitioner's federal court claim is nothing more than a recasting of his ADA claims, which were addressed in the administrative proceedings and later dismissed for his failure to preserve those claims in state district court. Moreover, Petitioner sought review of the rulings of the New Mexico State Courts after a final judgment was entered by the New Mexico Court of Appeals, but before appealing to the New Mexico Supreme Court. The litigation in the state and federal courts was not parallel, but the relief was.

IV. UNDER THE FACTS OF THIS CASE, A FEDERAL CHALLENGE TO THE DECISION OF THE BOARD OF MEDICAL EXAMINERS IS INEXTRICABLY INTERTWINED WITH THE STATE COURT'S RULING

As previously stated, this Court acknowledges that the *Rooker-Feldman* doctrine has been construed by various circuits to "extend far beyond the contours of the *Rooker* and *Feldman* cases." This Court then clarified and provided guidance as to the proper application of the doctrine and stated that *Rooker-Feldman* only applied to cases, such as this, where a "state-court loser complaining of injured caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgements." Thus, under this guidance, the Petitioner must be a state-court loser, that the injury was caused by a state-court judgment, that the state court judgment was rendered before the district court proceedings commenced and finally that the district court review would result in rejection of the state court judgment. In this case, Petitioner lost his appeal to the New Mexico State Court from the administrative agency seeking reinstatement of his medical license. The state district court affirmed revocation of his medical license and affirmed his psychological disorder could not be accommodated. The judgment of the state district court and the New Mexico Court of Appeals was entered prior to Petitioner filing for review of the inability of the Board to accommodate his mental illness under the ADA. If the federal court were to review the state district court and find that Petitioner should be accommodated, it would result in rejecting the state court judgment affirming the revocation of his license and the inability to accommodate him.

The alleged chasm between the circuits is an overly broad statement and seems to ignore the factual basis underlying this case. The facts show that the relief requested is "inextricably intertwined" as a determination of whether the Board and subsequent appellate review of the revocation and inability by the Board to accommodate Petitioner's mental illness to insure the safety of his patients, employees, colleagues, and the general public was proper. Petitioner alleges that the New Mexico Courts inappropriately reviewed and subsequently adjudicated his claims. This is exactly what *Rooker-Feldman* is intended to prevent. Under NMSA 1978 § 39-3-1.1 (1998), the state district court reviews the agency decision to determine whether the decision was arbitrary, capricious, or not supported by substantial evidence. If the state district court so finds that the agency's determination was improper under those guidelines, it may overturn the agency decision. In this case, as Petitioner asserts, the state district court did in fact find, based on substantial evidence the Board's revocation and inability to accommodate Petitioner's mental illness was not arbitrary or capricious. In effect, Petitioner asserts that he was entitled to a trial *de novo*, which is not in accordance with New Mexico law. Petitioner fails to recognize that he did argue that he was entitled to accommodation at the administrative hearing, but medical testimony showed his mental illness could not be accommodate. Petitioner also fails to acknowledge that he did raise his same ADA claims in his appeal and fully argued the merits of those claims in his statement of appellate issues. Plaintiff was not prevented from seeking accommodation within the state judicial framework, and in fact argued accommodation before the Board and on appeal. He was did not receive relief from the state district court's ruling, which affirmed the revocation of his license. However, the state court could have reinstated his license requiring the Board

to at least attempt to accommodate Plaintiff. The Board found and the state court affirmed that Petitioner could not be accommodated. If the federal court is entitled to hear Petitioner's ADA claim, it in effect is not only reviewing the Board's decision but the state district court's review and affirmation of the Board's decision such that the relief Petitioner is requesting is "inextricably intertwined."

The cases cited by Petitioner also lend little support to the alleged chasm between the circuits. In *Parkview Associates Partnership v. City of Lebanon*, 255 F.3d 321 (3d Cir. 2000), the court found that *Rooker-Feldman* was inapplicable because the plaintiff had not raised the claims before in any state judicial forum. The court stated that federal review would not require a determination that the state court was wrong. Additionally, the state appellate court was able to take new evidence on appeal and was not limited strictly to a review of the record below. In *Sheehan v. Marr*, 207 F.3d 35 (1st Cir. 2000), the court found the *Rooker-Feldman* doctrine inapplicable because the complaint filed in federal court was completely separate from the allegations brought in front of the Board. Moreover, the Plaintiff demonstrated that the Board could not hear discrimination claims and therefore could not appeal those claims to the state court. In this case, review of Petitioner's ADA claim would require review and determination that the state district court, and subsequently the New Mexico Court of Appeals, was incorrect in affirming the Board's decision to revoke Petitioner's license and inability to accommodate Petitioner's mental illness. This is a state-law question bearing on important New Mexico Board of Medical Examiner's requisites and New Mexico policy questions that require a coherent state policy to insure the medical profession maintains a standard of care that Petitioner is unable to meet.

CONCLUSION

The petition for write of certiorari should be denied, the judgment below affirmed, and the case dismissed as *Exxon Mobil* provided adequate guidance to the federal courts in the application of the *Rooker-Feldman* doctrine. The court should not grant certiorari as plenary review is not needed.

Respectfully submitted,

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In The

Supreme Court of the United States

STUART T. GUTTMAN, M.D.,

Petitioner,

v.

G.T.S. KHALSA, LIVINGSTON PARSONS and THE STATE OF NEW MEXICO,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

For the reasons stated in our petition for certiorari, the court of appeals' judgment is inconsistent with this Court's decision in *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 125 S. Ct. 1517 (2005), which was issued after the court of appeals ruled. This case also implicates three persistent conflicts in the circuits regarding the application of the *Rooker-Feldman* doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Nothing in Respondents' brief in opposition undermines those key points. Accordingly, this Court should grant, vacate, and remand in light of *Exxon Mobil* or, failing that, simply grant the petition for certiorari outright.

I. The Court of Appeals' Judgment Cannot be Squared With *Exxon Mobil*

As we detailed in our petition for certiorari, Pet. 3-4, Dr. Guttman filed his complaint in federal court on April 17, 2003. The state-court proceedings in this case did not conclude until nearly one month later, on May 16, 2003, when the New Mexico Supreme Court denied review. *See* Pet. App. 26.[1] Accordingly, this case does not fit the "narrow" circumstances in which the *Rooker-Feldman* doctrine applies, *Exxon Mobil*, 125 S. Ct. at 1522: cases in which "the losing party in state court filed suit in federal court *after the state proceedings ended*, complaining of an injury caused by the state-court judgment and seeking review

[1] Both the petition (at 4) and the brief in opposition (at 4) refer to the state supreme court's order as being issued on May 21. That was the date on which counsel received the order, but the order itself is dated as of May 16. *See* Pet. App. 26.

and rejection of that judgment." *Id.* at 1526 (emphasis added). Because the state-court proceedings were still ongoing at the time Dr. Guttman filed his complaint in federal court, *Rooker-Feldman* did not bar the district court from entertaining that complaint. *See id.* at 1526-1527 (no jurisdictional bar to parallel state and federal proceedings). And the final "entry of judgment in the state court" did not operate to terminate the district court's jurisdiction. *Id.* at 1527.

Attempting to sidestep *Exxon Mobil*, Respondents disingenuously assert that "[t]his is not a case . . . where a plaintiff initiated federal litigation before the conclusion of the state court proceedings." Brief in Opp. 6. But Respondents do not dispute the fact that the state-court proceedings did not "conclu[de]" until over one month after Dr. Guttman filed his federal-court complaint. Respondents appear to rely on the irrelevant fact that, on the day Dr. Guttman filed his federal-court complaint, the New Mexico Court of Appeals had ruled against him and he had not yet filed his petition for review with the New Mexico Supreme Court. *See id.* ("Petitioner initiated the cause of action in federal court fourteen days after final order of the New Mexico *Court of Appeals* was entered.") (emphasis added); *id.* at 8 (describing this as a case in which "the state *appellate court* had entered a final judgment on the merits with no pending appeal") (emphasis added).

As Respondents appear to concede, however, the time to seek discretionary review in the New Mexico Supreme Court had not yet run at the time Dr. Guttman filed his federal-court complaint; he timely filed a petition for

discretionary review four days later. *See id.* at 4.[2] Accordingly, the mere fact that Dr. Guttman had not *yet* filed his petition for review did not bring the state-court proceedings to a "conclusion." *Cf. Beard v. Banks*, 125 S. Ct. 2504, 2511 (2004) (state conviction becomes "final" only after, at a minimum, "the availability of direct appeal to the state courts has been exhausted") (internal quotation marks omitted). It simply makes no sense to suggest that Dr. Guttman's federal-court action was barred by *Rooker-Feldman* because it was filed on April 17, but that the federal courts would have had jurisdiction if the case had been filed four days *later*.

The judgment of the court of appeals is thus directly in conflict with *Exxon Mobil*. If *Exxon Mobil* had been available at the time the court of appeals ruled, the court of appeals could not have held that the *Rooker-Feldman* doctrine applies here. Accordingly, the Court should grant the writ of certiorari, vacate the judgment, and remand for further consideration.

II. This Case Implicates Three Distinct Conflicts in the Circuits

A. The Reasonable-Opportunity-to-Litigate Conflict

As we showed in our petition for certiorari, there is an abiding conflict in the circuits regarding whether *Rooker-Feldman* bars a federal-court action when the plaintiff had

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[2] *Before* he filed his federal-court complaint, Dr. Guttman had filed an untimely request for discretionary review in the New Mexico Court of Appeals; that court excused the default and considered his request "as if it were timely." Pet. App. 24.

no reasonable opportunity to litigate his claims in state court. The Tenth Circuit, in cases decided both before and after *Exxon Mobil*, has held that *Rooker-Feldman* applies even in cases where the plaintiff lacked a reasonable opportunity to litigate. At least six other circuits disagree. *See* Pet. 10-16.

Respondents do not deny the existence of this conflict in the circuits. They merely contend that Dr. Guttman did have an opportunity to litigate his claims in state court. *See* Br. in Opp. 13. But the simple fact is that *no* court – state or federal – has ever entertained Dr. Guttman's ADA claim on the merits. Dr. Guttman raised that claim in his first complaint in the state trial court, but that court held that he had failed to preserve the issue by not asserting an ADA claim before the state Board of Medical Examiners. Pet. App. 28. But nothing in the ADA requires exhaustion of state administrative remedies. And Dr. Guttman's ADA claim did not even ripen until the Board issued its decision revoking his medical license without granting him the accommodations he sought.

In these circumstances, it is a stretch to say that Dr. Guttman had *any* opportunity to litigate his ADA claim in state court – much less a full and fair opportunity to litigate that claim. Indeed, the facts here are quite similar to those in cases in which appellate courts outside of the Tenth Circuit that *Rooker-Feldman* inapplicable because the plaintiffs had been denied a reasonable opportunity to litigate in state court. *See* Pet. 14-15. This case thus directly implicates the conflict in the circuits.

B. The State-Courts-Failed-to-Provide-Relief Conflict

As we demonstrated in our petition for certiorari, Pet. 18-21, there is also an abiding conflict over whether the *Rooker-Feldman* doctrine applies to a case like this one, where the plaintiff does not directly challenge a state-court order but instead challenges an action of the defendant for which the state courts failed to afford relief. As exemplified by its decision in this case, the Tenth Circuit holds that the doctrine bars federal jurisdiction whenever the federal-court suit seeks essentially the same relief that the plaintiff unsuccessfully sought in state court. *See* Pet. App. 8-9. Three other circuits agree. *See* Pet. 18-19. But the Seventh and Ninth Circuits have held that the *Rooker-Feldman* doctrine is inapplicable in cases where the plaintiff does not "allege legal errors by the state courts" but instead "allege[s] wrongful acts by the defendants" – even if the plaintiff unsuccessfully sought similar relief in state court. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1142 (9th Cir. 2004) (W. Fletcher, J.); *see* Pet. 19-21 & n.3 (collecting cases).

Respondents do not deny the existence of that conflict in the circuits. They contend that the conflict is "tangential" to this case, Br. in Opp. 14, but in attempting to defend the Tenth Circuit's judgment on the Tenth Circuit's terms, they unwittingly highlight the conflict's importance to this case. Respondents argue that the court of appeals was correct to apply *Rooker-Feldman*, because "the relief sought in federal court is exactly the same relief that Petitioner sought in state court." *Id.* at 15. But in the Seventh and Ninth Circuits, the mere fact that Dr. Guttman sought the same relief in federal court as he had sought in state court would not be enough to trigger the

Rooker-Feldman bar. Had this case arisen in one of those circuits, Dr. Guttman's claims would not have been dismissed on *Rooker-Feldman* grounds, for Dr. Guttman's claim against the Board would have been exactly the same even if there had been no state-court proceedings.

C. The Substantial-Evidence Conflict

As we showed in our petition for certiorari, at least two other circuits have refused to apply the *Rooker-Feldman* doctrine in cases like this one, where the state-court proceedings simply engaged in substantial-evidence or arbitrary-and-capricious review of state administrative action. *See* Pet. 25-27. Those courts have held that federal claims are not "inextricably intertwined" with such proceedings, because the state administrative decision might have violated federal law without being arbitrary and capricious or lacking substantial evidence. *See Parkview Associates Partnership v. City of Lebanon*, 225 F.3d 321, 326 (3d Cir. 2000) (to decide federal challenge to zoning board's action, federal courts "would not have to review the state courts' determinations that the Board's decisions were supported by substantial evidence in the record"); *Sheehan v. Marr*, 207 F.3d 35, 40 (1st Cir. 2000) (plaintiff's "ADA claim cannot be regarded as inextricably intertwined with the state court's involuntary retirement decision" that reviewed state administrative agency's action for substantial evidence, because the case was not one in which "the federal claim succeeds only to the extent that the state court wrongly decided the issues before it"). In the decision below, by contrast, the Tenth Circuit ruled that Dr. Guttman's federal claims were "inextricably intertwined" with his earlier state-court judicial review proceeding – and thus barred by *Rooker-Feldman* – even

though that proceeding engaged in deferential substantial-evidence/arbitrary-and-capricious review. Pet. App. 9-10.

Respondents say nothing that diminishes the conflict between the decision below and the earlier decisions of the First and Third Circuits. Nor do they show that the conflict is immaterial to this case. To the contrary, Respondents acknowledge that Dr. Guttman's federal claim seeks "a trial *de novo*, which is not in accordance with New Mexico law." Br. in Opp. 17. Because Dr. Guttman seeks *de novo* review of the question whether the Board's decision violated the ADA – review that the deferential state-court judicial-review proceedings did not afford him – *Rooker-Feldman* would not have applied to his case if it had arisen in the First or Third Circuits.[3] The conflict was thus decisive to Dr. Guttman's case.

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[3] It bears repeating that state administrative proceedings cannot themselves bar subsequent federal-court jurisdiction under *Rooker-Feldman*. *See Verizon Maryland, Inc. v. Public Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002).

CONCLUSION

For the foregoing reasons and those stated in our petition for certiorari, the petition for writ of certiorari should be granted, the judgment below vacated, and the case remanded for further consideration in light of *Exxon Mobil*, *supra*. If the Court does not follow that course, it should grant certiorari and set the case for plenary review.

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